Nos. 93-1456 and 93-1828

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

U.S. TERM LIMITS, INC., ARKANSANS FOR GOVERNMENTAL REFORM, INC., FRANK GILBERT, GREG RICE, LON SCHULTZ, and SPENCER PLUMLEY,
Petitioners,

v.

RAY THORNTON, *et al.*,
Respondents.

WINSTON BRYANT,
ATTORNEY GENERAL OF ARKANSAS,
Petitioner,

v.

BOBBIE E. HILL, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Arkansas

BRIEF FOR PETITIONERS U.S. TERM LIMITS, INC., *et al.*

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157 pp

QUESTION PRESENTED

Does Article I of the Constitution forbid a state to decline to print on its election ballots the names of multi-term incumbents in the House of Representatives and Senate?

LIST OF PARTIES

Petitioners in this Court are U.S. Term Limits, Inc., Arkansans for Governmental Reform, Inc., Frank Gilbert, Greg Rice, Lon Schultz, and Spencer Plumley.

Respondents in this Court and parties to the proceeding in the Supreme Court of Arkansas are:

Representatives and Senators: Ray Thornton, Blanche Lambert, Dale Bumpers, David Pryor, Jay Dickey, and Tim Hutchinson.

State legislators: James C. "Jim" Scott, W.D. "Bill" Moore, Jr., Mike Ross, Wayne Dowd, Neely Cassady, George Hopkins, Jean C. Edwards, Jay Bradford, Travis A. Miles, Lu Hardin, Eugene "Bud" Canada, Charlie Cole Chaffin, Vic Snyder, Jerry D. Jewell, Cliff Hoofman, Stanley Russ, Mike Beebe, Roy C. "Bill" Lewellen, Mike Everett, Steve Bell, Allen Gordon, Jon S. Fitch, Morrrill Harriman, Mike Bearden, Jerry P. Bookout, Mike Todd, Nick Wilson, Steve Luelf, Joe E. Yates, David R. Malone, Clarence Bell, Jack Anderson Gibson, Bill Gwatney, Reid Holiman, Railey A. Steele, Louis McJunkin, Jerry Hunton, B.G. Hendrix, Carolyn Pollan, Ralph "Buddy" Blair, Jr., W.R. "Bud" Rice, Ode Maddox, Gus Wingfield, Hoye D. Horn, David Beatty, Arthur Carter, Charles Whorton, Jr., Frank J. Willems, Lloyd R. George, Bob J. Watts, L.L. "Doc" Bryan, Bruce Hawkins, James C. Allen, John W. Parkerson, John H. Dawson, Billy Joe Purdom, Randy Thurman, W.H. "Bill" Sanson, Bill Stephens, H. Lacy Landers, Bobby G. Newman, Jodie Mahony, Phil Wyrick, Mark Pryor, Carol "Coach" Henry, James G. Dietz, Doug Wood, Mike Wilson, William H. Townsend, Larry Goodwin, John E. Miller, John Paul Capps, J. Sturgis Miller, Josetta E. Wilkins, Jacqueline J. Roberts, Charlotte Schexnayder, Jimmie Don McKissack, Michael K. Davis, Thomas G. Baker, Albert "Tom" Collier, V.O. "Butch" Calhoun, Wanda Northcutt, N.B. "Nap" Murphy, Jime Holland, Tim Wooldridge, Bobby G. Wood,

Bobby L. Hogue, Owen Miller, J.L. "Jim" Shaver, Pat Flanagin, Wayne Wagner, Christene Brownlee, Lloyd C. McCuiston, Jr., Bob McGinnis, Ernest Cunningham, Bynum Gibson, Jim Von Gremp, Dennis Young, Armil O. Curran, D.R. "Buddy" Wallis, Vada Sheid, Greg Wren, E. Ray Stalnaker, David Choate, Bill Fletcher, Marian D. Owens, and Claud V. Cash.

Others: State of Arkansas, Republican Party of Arkansas, Democratic Party of Arkansas, Bobbie E. Hill, Dick Herget, Americans for Term Limits, Steve Goss, W. Asa Hutchinson, George O. Jernigan, Jr., Mark Riable, and Bill Walters.

LIST PURSUANT TO RULE 29.1

Petitioner U.S. Term Limits, Inc., is a non-profit corporation incorporated under the laws of the District of Columbia. It has no parent companies or subsidiaries. Arkansans for Governmental Reform, Inc., is a not-for-profit corporation incorporated under the laws of Arkansas. It has no parent companies or subsidiaries. Americans for Term Limits is a not-for-profit corporation incorporated under the laws of Arkansas. On information and belief, it has no parent companies or subsidiaries.

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OPINIONS BELOW

The unreported opinions of the Circuit Court of Pulaski County, Arkansas are at P.C.A. 45a, and 53a. The opinions of the Supreme Court of Arkansas are reported at 316 Ark. 251 and 872 S.W.2d 349, and appear at P.C.A. 1a; its order denying rehearing is at P.C.A. 44a.

JURISDICTION

The judgment of the Supreme Court of Arkansas was entered March 7, 1994, and rehearing was denied March 14, 1994. P.C.A. 1a, 44a. The petition for certiorari in No. 93-1456 was filed March 17, 1994, and granted June 20, 1994. J.A. 208. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment 73 of the Constitution of Arkansas and pertinent portions of the Constitution of the United States and statutory authorities are reproduced in the Appendices hereto, respectively pp. 1a and 3a, *infra*.

STATEMENT

On November 3, 1992, 60% of the voters of Arkansas adopted the Arkansas Constitution's Amendment 73, declaring:

> "The people of Arkansas find and declare that elected officials who remain in office too long become preoccupied with reelection and ignore their duties as representatives of the people. Entrenched incumbency has reduced voter participation and has led to an electoral system that is less free, less competitive, and less representative than the system established by the Founding Fathers."

P. 1a, *infra*.[1] The amendment provides that after being elected three times (six years) to the U.S. House of Representatives, or twice (twelve years) to the U.S. Senate, an incumbent's name will not continue to appear on the printed ballot for reelection to those respective offices. *Id.*, § 3, p. 2a, *infra*. However, such a person may nevertheless continue to run for election to that office, and may serve if elected. *Id.*, P.C.A. 15a.[2]

A voter brought this suit challenging Amendment 73 on several state and federal constitutional grounds. J.A. 41. Petitioners, who are its official sponsor and supporters, J.A. 72, 101-02, intervened as defendants. J.A. 90, 147. The Circuit Court of Pulaski County, Arkansas, without taking evidence granted summary judgment,

[1] The Amendment received 59.9% of the vote cast and carried all but six of Arkansas' 75 counties. J.A. 164-66.

[2] Amendment 73 separately establishes term limits of varying length for offices in the executive and legislative branches of the state government. *Id.*, §§ 1, 2. These provisions were upheld by the Supreme Court of Arkansas without dissent against First and Fourteenth Amendment challenge. P.C.A. 20a, 27a, 42a.

holding Amendment 73 "void and invalid" under Arkansas law for a defect in its enacting clause. P.C.A. 61a. The court added its opinion that none of Amendment 73's provisions would violate the First or Fourteenth Amendments, but that its ballot restrictions on muti-term incumbents seeking reelection to the House or Senate would violate Article I of the Constitution of the United States. P.C.A. 59a-60a.

On appeal, the Supreme Court of Arkansas issued five opinions, three for the majority and two dissents. It held that Amendment 73 had been adopted in compliance with state law, but then ruled by a vote of 5-2 that insofar as Amendment 73 restricts ballot access for multi-term congressional incumbents, it violates Article I. A plurality opinion of three justices acknowledged that under Amendment 73 such an incumbent "is not totally disqualified and might run as a write-in candidate" or serve after appointment to a vacancy. P.C.A. 15a. However, without elaboration it concluded that

> "These glimmers of opportunity for those disqualified, though, are faint, indeed—so faint in our judgment that they cannot salvage Amendment 73 from constitutional attack."

P.C.A. 15a. On that basis it ruled that Amendment 73 had established a disqualification for being a Representative or Senator equivalent to those in Article I, §§ 2 and 3. It then held that, although the point was "not specifically addressed" in the Constitution, P.C.A. 12a, nevertheless "[q]ualifications set out in the U.S. Constitution" in Article I, §§ 2 and 3, "fix the sole requirements for congressional service." P.C.A. 14a-15a.

One dissent, citing two federal court of appeals decisions,[3] reasoned that Amendment 73 "merely makes it more difficult for an incumbent to be elected," and "a person is qualified within the meaning of Article I of the United States Constitution if permitted to serve if elected."

[3] *Hopfmann* v. *Connolly*, 746 F.2d 97 (1st Cir. 1981), *vacated in part on other grounds*, 471 U.S. 459 (1985); *Joyner* v. *Mofford*, 706 F.2d 1523 (9th Cir.), *cert. denied*, 464 U.S. 1001 (1983).

P.C.A. 37a. Another dissenter concluded that "the qualifications [in Article I, §§ 2 and 3] are to be the *minimum* requirements rather than the *exclusive* requirements." P.C.A. 34a (emphasis in original). Rehearing was denied. J.A. 207. This Court granted certiorari. J.A. 208, 209.

SUMMARY OF ARGUMENT

1. Amendment 73 does not set a qualification for office. Certainly it was advocated by supporters of turnover in elective offices, and is designed to lessen the overwhelming election advantages, many of them governmentally conferred, that are enjoyed by multi-term incumbents. But it does so only by not continuing to print such incumbents' names on ballots. It does not disqualify them from running, being elected, or serving in office.

This Court has never held that Article I bars a state ballot restriction. That claim once was urged against a California law that restricted access to the ballot based on prior political affiliation and activity. *Storer* v. *Brown*, 415 U.S. 724 (1974). The argument that the ballot law was a qualification and violated Article I was dismissed by this Court with incredulity, as "wholly without merit." 415 U.S. at 746 n.16. Practically all state election laws, and ballot regulations in particular, influence election outcomes—none more so than the ballot restrictions accompanying primary-election laws, which States have enacted for nearly a century now, and whose usual beneficiaries are incumbents. *E.g., Karcher* v. *Daggett*, 462 U.S. 725, 740 (1983). Until this year the courts have consistently held that Article I simply is not implicated by state laws that deny benefits or make election more difficult, but do not prohibit election and service. Pp. 15-17, *infra*.

The holding of the Arkansas court is that not printing a multi-term incumbent's name on the ballot amounts to a prohibition on holding office. But both history and the record in this case fail to support that assertion. Members of the House and Senate have been elected by write-in, including a Representative from Arkansas. And

the record here is that name recognition along with the many other advantages of congressional incumbency make a multi-term incumbent's opportunity for write-in victory substantial. Pp. 17-19, *infra*.

States are not free, of course, to pass any ballot restrictions they want. State ballot-access laws can properly be, and regularly are, subjected to constitutional testing—but under the familiar standards of the Fourteenth Amendment. *E.g., Norman* v. *Reed*, 112 S. Ct. 698 (1992); *Burdick* v. *Takushi*, 112 S. Ct. 2059 (1992); *Munro* v. *Socialist Workers Party*, 479 U.S. 189 (1986). To depart from *Storer* v. *Brown* and the many decisions like it, and now equate a state ballot regulation with a disqualification for office, would open to Article I challenge the state primary laws and hundreds of other provisions by which fifty states tightly regulate congressional elections. For the courts to try to decide which of these state election laws should now be recharacterized as qualifications would be particularly unnecessary when the institution affected—the Congress—is specifically assigned full authority in Article I, § 4, to override Arkansas Amendment 73, or any other state law on congressional elections that it deems unwise.

2. Even if the Arkansas Supreme Court were correct in its assertion that Amendment 73 added qualifications for holding congressional office, still Article I would not be violated. Article I, in both § 2 and § 4, explicitly assigns the States broad power over congressional elections. It restricts such state regulations only by establishing Congress' power to annul them, which later was supplemented by the Fourteenth Amendment. Its disqualification provisions, in Article I, §§ 2 and 3, set minimums, but contain no restrictions on state laws.

The Arkansas court believed that Article I by implication takes away state power without saying so. But from the time of Chief Justice Marshall, this Court has repeatedly declined to imply prohibitions of state power from the Constitution's silence. *Sturges* v. *Crowninshield*, 4 Wheat. 12, 193 (1819); *Barron* v. *Baltimore*, 7 Pet.

243, 249 (1833); *Goldstein* v. *California*, 412 U.S. 546, 552 (1973). The Tenth Amendment further confirms that constitutional limitations on state power are normally express, *e.g.*, Article I, § 10, and only rarely to be implied.

It is no accident that the Constitution's text is barren of the prohibition the Arkansas Supreme Court implied. A clause that would have made the disqualifications in Article I, § 2, exclusive was deleted from an early draft. Thereafter exclusivity was not proposed or considered, and although the authority of *Congress* to add disqualifications was doubted by some, *state* power was never addressed. Indeed, when a proposal to set property requirements or specify a congressional power to do so was defeated—with some delegates commenting that the subject was not appropriate for national uniformity—others added that specifying power to set property qualifications might be misunderstood to negate power to set other qualifications. See pp. 38-42, *infra*.

What the Constitution allowed the States to do was demonstrated by the added qualifications for Congress that over half of them promptly enacted. Immediately upon ratifying the Constitution, States passed laws requiring that Representatives be district residents; establishing nominating and screening processes for candidates; and even requiring that Representatives be landed property owners. (The States similarly added residence and property requirements for Presidential electors in addition to the disqualifications specified in Article II.) In fact, although some doubts had been expressed as to whether *Congress* (as opposed to the States) could add disqualifications, the First Congress without hesitation enacted the first of more than 200 years of federal statutes adding disqualifications for conviction of certain crimes, a practice it has followed "frequently and of old." *De Veau* v. *Braisted*, 363 U.S. 144, 159 (1960) (Frankfurter, J., announcing judgment). Many are still in force, as are similar state enactments which bar from election felons,

state officeholders, persons who are not voters, and a wide variety of other categories. See pp. 27-29, *infra*.

The Arkansas plurality cited *Powell* v. *McCormack*, 395 U.S. 486 (1969); but there this Court expressly declined to consider state power, and held only that when a single House sits as "Judge," then the term "Qualifications" as used in Article I, § 5, refers only to those set forth in the Constitution. See *Nixon* v. *United States*, 113 S. Ct. 732, 740 (1993); *Buckley* v. *Valeo*, 424 U.S. 1, 133 (1976). The Arkansas opinion postulated a need for "uniformity" in qualifications for Congress. P.C.A. 14a. But state congressional-election laws have never been uniform. And no State whose people limit how long their representatives will stay in a House of Congress casts any burden on other States, any more than if its people voted unwisely against a particular candidate. In fact, the States' central role in selecting their national representatives is an important protection in maintaining the balance of the federal system. *Garcia* v. *San Antonio Metro. Transit Auth.*, 469 U.S. 528, 551 (1985).

It would be late in the day, given the volume of contemporaneous state, and even federal, disqualification legislation, and the ballot-restriction and disqualification laws in dozens of jurisdictions, now to hold that it all was and is unconstitutional, under an unstated implication from the Constitution's silence. Nor is it necessary in any sense to do so. No federal function is threatened. No majority is seeking to suppress ideas or to impose its will on a powerless minority or protected class. The voters of Arkansas were not altering the structure of the federal government. They were simply trying, in choosing their representation, to open the political process and to remove one of the many election advantages that long-term incumbents enjoy. The usual state power to regulate congressional elections should not be eliminated by an unstated negative implication when (1) the Constitution is silent; (2) two centuries of lawmaking are to the contrary; and (3) Congress, although specifically empowered by the Constitution to do so, has not seen fit to interfere.

ARGUMENT

I. ARTICLE I ASSIGNS THE STATES BROAD POWER TO REGULATE CONGRESSIONAL ELECTIONS.

Article I establishes a framework for conduct of congressional elections in which state authority is normally decisive.

A. Article I, § 2, Authorizes "Wide Discretion" in Choosing Representatives.

Article I, § 2, first directs that Representatives are to be chosen by the people of each State, with voters whose qualifications are the same as those of voters for the most numerous branch of the state legislature.

> "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

By this clause, this Court has held,

> "the states are given . . . a wide discretion in the formulation of a system for the choice by the people of representatives in Congress."

United States v. *Classic*, 313 U.S. 299, 311 (1941).

> "[T]he states are authorized by the Constitution, to legislate on the subject as provided by § 2 of Art. I, to the extent that Congress has not restricted state action by the exercise of its powers to regulate elections under § 4 . . . ."

Id. at 315. Thus, for example, the States' power, even without congressional sanction, to elect a House member by people of a district instead of by the people of the State, as long as districts are reasonably equal in population, has "never been doubted." *McPherson* v. *Blacker*, 146 U.S. 1, 26 (1892); *cf. Wesberry* v. *Sanders*, 376 U.S. 1 (1964).

B. Article I, § 3, Provided for Choosing Senators as the State Legislatures Saw Fit.

The choosing of Senators was placed by Article I, § 3, in the discretion of the state legislatures:

> "The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof . . . ."

The legislatures' methods varied, as did their criteria for election.[4] In 1913 the Seventeenth Amendment reassigned this electoral power to parallel Article I, § 2.[5]

C. Article I, § 4, Grants "Broad" Power To Regulate the Manner of Elections.

The conduct of elections to both Houses of Congress was further specifically assigned to the States, subject to authority granted to Congress to override state laws or enact laws of its own on the subject. Section 4 of Article I provides:

> "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature [6] thereof; but the Congress may at any time by Law make or alter such

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[4] At the first elections for Senators, in some legislatures both houses voted jointly (*e.g.*, Virginia and New Jersey). See 2 DOCUMENTARY HISTORY OF THE FIRST FEDERAL ELECTIONS 1788-1790 281 (G. DenBoer, *et al.*, eds. 1984); 3 *id.* 25 (1986). Some voted separately (*e.g.*, Massachusetts and Connecticut). 1 *id.* 514-20 (1976); 2 *id.* 28. New Hampshire apparently had one house nominate, the other approve. 1 *id.* 783. New York could not agree on any procedure. 3 *id.* 513. Maryland formally required that one Senator reside on the Eastern Shore, the other on the Western Shore. 2 *id.* 146-49.

[5] "The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

[6] The phrase "by the Legislature thereof" has long been construed to include initiatives, constitutional provisions, and other state methods of enacting laws. *Smiley* v. *Holm*, 285 U.S. 355, 372 (1932); *Ohio ex rel. Davis* v. *Hildebrant*, 241 U.S. 565, 569-70 (1916).

> Regulations, except as to the Places of chusing Senators."

As Madison explained "Times, Places and Manner," "These were words of great latitude." 2 M. FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787, 240 (rev. ed. 1966) (hereinafter "FARRAND").[7] This provision became controversial in the state ratifying conventions only because of the power it granted to Congress.[8] It was defended as essential, because otherwise the States would be free to do whatever they chose. See THE FEDERALIST No. 59 at 399, 402-03 (Hamiltion) (J. Cooke ed. 1961) (edition herein cited unless otherwise indicated).

Article I, § 4, thus confirms "a broad power." *Tashjian* v. *Republican Party*, 479 U.S. 208, 217 (1986); *accord, United States* v. *Classic, supra.* It has never been confined to minor matters of election procedure.[9] "The breadth of those powers" allows the States, unless Congress acts, "to provide a complete code for congressional elections." *Roudebush* v. *Hartke*, 405 U.S. 15, 24 (1972), *quoting in part Smiley* v. *Holm*, 285 U.S. 355, 366 (1932).[10] The States' authority over congressional elections, unless Congress steps in, is "matched by state control over the election process for state offices." *Tashjian* v. *Republican Party*, 479 U.S. 208, 217 (1986). Under both § 2 and § 4 of Article I,

> "the States have evolved comprehensive, and in many respects complex, election codes regulating in most substantial ways, with respect to both federal and state elections, the time, place, and manner of holding primary and general elections, the registration and qualifications of voters, and the selection and qualification of candidates."

Storer v. *Brown*, 415 U.S. 724, 730 (1974).

D. Article I Includes Minimum Qualifications.

Article I disqualifies from membership in the House or Senate persons who do not meet specified minimums of age, residency, and citizenship, and includes other requirements as well. The second clause of Article I, § 2, provides:

> "No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen."

With respect to Senators, Article I, § 3, provides that

> "No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen." [11]

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[7] The same word "manner" was used in the provision of the Articles of Confederation in accordance with which some States set term limits for their representatives (beyond those in the Articles themselves): "delegates shall be annually appointed in such manner as the legislature of each State shall direct." Art. of Confed. V; see Md. Const., Art. XXVII (1776); Pa. Const., § 11 (1776); N.H. Const., Pt. II (1784); Vt. Const., Art. XXVII (1786).

[8] *E.g.*, 4 J. ELLIOT, DEBATES IN THE SEVERAL STATE CONVENTIONS 50 (1836) (Governor Johnston of North Carolina noting that several states had proposed amendments to limit Congress' power over elections); 2 *id.* 49 (*M*assachusetts) 325-26 (New York); 3 *id.* 175 (Virginia); 4 *id.* 52 (North Carolina) (hereinafter "ELLIOT").

[9] See *Oregon* v. *Mitchell*, 400 U.S. 112, 117-18 (1970) (Black, J., announcing judgment that Article I, § 4, empowers Congress to lower age qualification for voters for Congress to eighteen years). In the federal Voting Rights Act, 79 Stat. 445 (1965), as amended, 42 U.S.C. §§ 1971, 1973-1973bb-1, Congress also under the Fourteenth Amendment vastly altered the establishment of congressional districts, the qualifications of voters, and the likelihood of particular categories of candidates being elected.

[10] A narrow interpretation of "Times, Places and Manner," to exclude primary laws affecting which names appeared on the general election ballot, was adopted in the opinion of Justice McReynolds in *Newberry* v. *United States*, 256 U.S. 232, 257 (1921), but was explicitly rejected by this Court in *United States* v. *Classic, supra*, 313 U.S. at 317.

[11] Although some litigants and commentators lately refer to these as "the Qualifications Clauses," no such terminology was used

Madison grouped with these the fourth requirement, in Article I, § 6, that disqualifies any person holding other federal office from sitting in Congress.[12] See THE FEDERALIST No. 52 at 355. In addition, Article VI requires that members of Congress "be bound by Oath or Affirmation, to support this Constitution," [13] and Article I, § 3, cl. 7, authorizes disqualification from federal office as a punishment in cases of impeachment.[14]

Thus the three disqualifications listed in §§ 2 and 3 of Article I were never exclusive in the Constitution itself. Other qualifications for federal offices were contemplated by Article VI, which forbids religious tests. The most likely source of such tests would be the States, some of which imposed them in 1789; without this prohibi-

at the Constitutional Convention, and this Court has used the term "Qualifications Clause" to refer instead to Article I, § 2, cl. 1, which sets the "Qualifications" of voters. See *Tashjian* v. *Republican Party*, 479 U.S. 208, 225 (1986).

[12] Article I, § 6, provides in part:

> "[N]o Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office."

In addition, section 3 of the Fourteenth Amendment added a disqualification of officials who after taking an oath to support the Constitution engage in rebellion against the United States or give aid and comfort to its enemies.

[13] Article VI, cl. 3, provides:

> "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

The oath requirement thus constitutes a constitutional qualification for holding state as well as federal office; but it has never been claimed to be an exclusive one. *Cf. Bond* v. *Floyd*, 385 U.S. 116, 130-31 (1966).

[14] Article I, § 3, cl. 7, provides in part:

> "Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States...."

tion, the offices to which state religious tests might otherwise apply were Representative and Senator.[15]

E. The Tenth Amendment Confirms State Authority.

The Tenth Amendment provides that

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

As a limitation on the powers of Congress, the amendment "states but a truism that all is retained which has not been surrendered." *New York* v. *United States*, 112 S. Ct. 2408, 2418 (1992), *quoting United States* v. *Darby*, 312 U.S. 100, 124 (1941). But applied to state power, the Tenth Amendment means something more. It confirms the understanding that unless the Constitution specifies or inescapably implies otherwise, legislative power of the States and people is undisturbed. Congress requires constitutional authorization to legislate; the States do not, and may exercise all powers not vested exclusively in the federal government, or prohibited to the States by the Constitution itself or by valid federal law or treaty. *Gregory* v. *Ashcroft*, 501 U.S. 452, 457 (1991); *Tafflin* v. *Levitt*, 493 U.S. 455, 458 (1990).[16] State laws, moreover, receive a presumption of constitutionality. *Fletcher* v. *Peck*, 6 Cranch 87, 128 (1810).

The powers which "remain in the State governments are numerous and indefinite." *Gregory* v. *Ashcroft*, *supra*, 501 U.S. at 458, quoting THE FEDERALIST No. 45 at 292-93 (C. Rossiter ed. 1961) (Madison). And the States' role in elections is particularly vital, for the Framers "gave the States a role in the selection of both

[15] See, *e.g.*, S.C. Const., arts. XII, XIII (1778); Pa. Const., § 10 (1776); *cf.* Parliamentary Test Act, 30 Car. II, stat. 2 (1677) (requiring religious oath and disqualifying Roman Catholics from Parliament).

[16] The Arkansas plurality apparently misunderstood this, P.C.A. 12a, stressing that no national term-limits requirement had been required by the Constitution, and also that

> "the framers of the U.S. Constitution did not expressly endow the States with this same authority."

the Executive and the Legislative Branches of the Federal Government" in order to "protect the States from overreaching by Congress." *Garcia* v. *San Antonio Metro. Transit Authority,* 469 U.S. 528, 551 (1985); see also *New York* v. *United States, supra,* 112 S. Ct. at 2418. The ability of the people of the States to choose who is to make federal laws for them is a practical and essential regulator of the federal balance. See Wechsler, *The Political Safeguards of Federalism,* 54 COLUM. L. REV. 543 (1954).[17]

II. THE RECORD DOES NOT SUPPORT THE HOLDING THAT AMENDMENT 73 CREATES A DISQUALIFICATION LIKE THOSE IN ARTICLE I.

Lacking the benefit of having one's name among the few on the ballot is of course a significant drawback to a

[17] Justice Joseph Story in his treatise argued that because the offices of Representative and Senator had been created by the Constitution, no powers with respect to them could be "reserved" by the Tenth Amendment to the States, for "no powers could be reserved to the states, except those, which existed in the states before the constitution was adopted." 2 J. STORY, COMMENTARIES ON THE CONSTITUTION § 625 (1833); see also *id.* § 626. But the Tenth Amendment assigned to the States or people all powers which were not granted to the federal government or denied to the States; the term "reserved" is not temporal, but refers to the federal structure, with States exercising whatever powers were not assigned to the federal government, whether or not such powers had been previously exercised. Moreover, the Amendment was adopted in 1791, after Article I and its electoral system had already been adopted, and indeed many States had already passed laws adding particular qualifications for Congress in 1788, before the Constitution took effect. See pp. 25-27, *infra.* Finally, regulating elections to the national legislative body was not a new power previously unknown to the States; they had chosen their representatives in the Congress of the Articles of Confederation by any means they wanted, and some indeed had set term limits. See n. 7, *supra.* The exercise of essentially the same power under the superseding Constitution was nothing so novel as to be outside the scope of the Tenth Amendment. *Cf.* THE FEDERALIST No. 39 at 256 (Madison): "the proposed Government cannot be deemed a *national* one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects." (Emphasis in original.)

politician seeking reelection. But nothing in the record established that not continuing to appear on the ballot is the same as disqualification, and in fact the record demonstrated otherwise. Not surprisingly, this Court, federal courts of appeals, and other state supreme courts have held in similar situations that state restrictions on appearing on the printed ballot for Congress do not rise to the level of disqualifications for office.

A. This Court Does Not Treat Ballot Restriction as Disqualification From Office.

Printed election ballots came into use in the United States beginning in the late 1800's,[18] and primary-election laws soon followed. States concurrently enacted a wide variety of laws restricting appearance on the ballot to a few candidates—usually party nominees and persons who can meet petition requirements.[19] The constitutionality of state primary laws has never been seriously doubted. *Cf., e.g., United States* v. *Classic, supra,* 313 U.S. at 318. Today States also have myriad other laws that tightly restrict access to the printed ballot. See examples at Appendices F and G, pp. 43-87, *infra.*

The claim that a state law denying ballot access violates Article I has been considered and rejected by this Court. In *Storer* v. *Brown,* 415 U.S. 724 (1974), a California law barred from the printed ballot any independent candidate for the House of Representatives who had been affiliated with a political party within the year prior to the preceding primary, or had voted in the primary. Two candidates for the House argued at length

[18] Prior to that time, elections for Congress were conducted by voters' writing the name of the person favored on a slip of paper, preparing their own ballots, or *viva voce.* See *Burdick* v. *Takushi, supra,* 112 S. Ct. at 2070 (Kennedy, J., dissenting).

[19] *E.g.,* Ark. Const., amend. 29, § 5; see pp. 27-29, *infra.* See generally L. FREDMAN, THE AUSTRALIAN BALLOT 46-48 (1968); C. MERRIAM & L. OVERACKER, PRIMARY ELECTIONS (1928). State laws also restrict appearance on printed ballots in the primary elections, generally to persons collecting sufficient signatures, paying fees, meeting party affiliation requirements, and not being subject to various disqualifications. See pp. 28, 74a-80a, *infra.*

to this Court that the ballot restriction established a new qualification for election to the House, and that Article I implicitly forbade this. After rejecting a First and Fourteenth Amendment challenge, this Court disposed of the Article I argument in a footnote:

> "Appellants also contend that [the State law] purports to establish an additional qualification for office of Representative and is invalid under Art. I, § 2, cl. 2, of the Constitution. The argument is wholly without merit."

415 U.S. at 746 n.16. This Court characterized the law as "an absolute bar to candidacy, and a valid one." *Id.* at 737. But with respect to Article I, it explained,

> "The non-affiliation requirement no more establishes an additional requirement for the office of Representative than the requirement that the candidate win the primary to secure a place on the general ballot or otherwise demonstrate substantial community support."

Id. at 746 n.16. This Court also pointed out the availability of election by write-in. *Id.* at 736 n.7.

Other cases follow the same reasoning. As the First Circuit explained,

> "the test to determine whether or not the 'restriction' amounts to a 'qualification' . . . is whether the candidate 'could be elected if his name were written in by a sufficient number of electors.' "

Hopfmann v. *Connolly*, 746 F.2d 97, 103 (1st Cir. 1984), *vacated in part on other grounds*, 471 U.S. 459 (1985), *quoting in part State ex rel. Johnson* v. *Crane*, 65 Wyo. 189, 206-07, 197 P.2d 864, 871 (1948). Similarly, the Ninth Circuit cited this Court's decision in *Storer* in holding that a state law forbidding state officials to run for Congress while in office was not an Article I qualification, even though it had the practical effect of chilling candidacy by persons who did not want to give up their jobs. *Joyner* v. *Mofford*, 706 F.2d 1523, 1531 (9th Cir.), *cert. denied*, 464 U.S. 1002 (1983). Many other cases stand for the rule that state ballot

regulations are limited under the federal Constitution not by Article I but, if at all, by the Fourteenth Amendment or other explicit restrictions on state laws.[20]

B. The Record Does Not Support the Assumption That Established Incumbents Cannot Win Reelection by Write-In.

The linchpin of the Arkansas plurality's reasoning, on which its entire opinion depended, was an assertion: that a long-term incumbent's opportunity to win reelection by write-in was insignificant. The plurality opinion acknowledged, and held as a matter of state law, that under Amendment 73 a long-serving congressional incumbent "is not totally disqualified and might run as a write-in candidate," and also might serve if appointed by the governor to fill a vacancy. P.C.A. 15a. But it dismissed those avenues to holding office in a single sentence:

> "These glimmers of opportunity for those disqualified, though, are faint, indeed—so faint in our constitutional judgment that they cannot salvage Amendment 73 from constitutional attack."

Id. No evidence was presented to the state courts to support that conclusion, other than election statistics showing that obsure write-in candidates do not win elections. As its only authority, the opinion cited a district court opinion that—relying on a comparable metaphor—had scoffed at the write-in option available under Washington's similar law.[21]

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[20] *E.g.*, *Public Citizen, Inc.* v. *Miller*, 992 F.2d 1548 (11th Cir. 1993), *affirming* 813 F. Supp. 821, 833 (N.D. Ga. 1993); *State ex rel. O'Sullivan* v. *Swanson*, 127 Neb. 806, 808, 257 N.W. 255, 255-56 (1934); *State ex rel. McCarthy* v. *Moore*, 87 Minn. 308, 92 N.W. 4 (1902).

[21] *Thorsted* v. *Gregoire*, *supra*, 841 F. Supp. 1068, 1079 (W.D. Wash. 1994) ("a pinhole of opportunity"), *appeal pending sub nom. Thorsted* v. *Munro*, Nos. 94-35222 etc. (9th Cir.), *cert. denied sub nom. Citizens for Terms Limits* v. *Foley*, 114 S. Ct. 2727 (1994). The Washington court issued its opinion on summary judgment in the face of affidavits of experts, both political scien-

The opinion's absolute assertion is contrary to the record and historically incorrect.[22] For example, three current Members were once elected to Congress by write-ins, J.A. 172-77—including one who had unsuccessfully sought ballot access in that very election.[23] Other congressional write-ins have succeeded, J.A. 202, including one from Arkansas itself. J.A. 169-70, 201-02. The better known the candidate, the greater the opportunity for success. J.A. 201, 203. In fact, the Arkansas Supreme Court had before it a political scientist's uncontroverted affidavit, J.A. 201, 203-04, that

> "although a write-in candidacy is more difficult to win than one in which a candidate's name is on the ballot, it is far from impossible for a write-in candidate to win, especially if the write-in candidate has substantial name identification. . . . Most write-in candidacies in the past have been waged by fringe candidates, with little public support and extremely low name identification. In instances when write-in candidates have been well known, however, they often have been successful. . . . The typical write-in incumbent almost certainly will have a higher name recognition, more sophisticated campaign skills, ongoing endorsements from political allies and newspapers, a well-honed talent for working the media, the good will of constituents, and a much larger campaign fund than the non-incumbents on the ballot . . . . Given a choice, any rational candidate would prefer to be a well known incumbent write-in candidate

tists and former congressmen, that a well-known incumbent would have a powerful opportunity to win as a write-in candidate.

[22] Lacking any evidentiary foundation, the ruling is one of law. Even if treated as a factual finding, the state court's conclusion still would not bind this Court insofar as a determination of federal law depends on it. *E.g., Hooven & Allison Co.* v. *Evatt*, 324 U.S. 652, 659 (1945), and cases there cited.

[23] See J.A. 175-76 (Rep. Skeen): *Skeen* v. *Hooper*, 631 F.2d 707, 711 (10th Cir. 1980) (rejecting claim "[t]hough write-in campaigns are generally a difficult thing"), *citing Jenness* v. *Fortson*, 403 U.S. 431, 434 (1971).

> rather than a political novice who happens to have his or her name printed on the ballot."

Even in the context of little-known candidates, this Court, unlike the Arkansas court, has often treated the availability of write-in election as significant in rejecting Fourteenth Amendment challenges to election laws.[24] This Court also holds, moreover, that *a priori* characterizations are not adequate, and requires that a ballot regulation not be held unduly burdensome without proper findings of fact. *Mandel* v. *Bradley*, 432 U.S. 173, 178 (1977); *Storer* v. *Brown, supra*, 415 U.S. at 742. On the present record, the only possible findings would be exactly contrary to the decision on review.

C. The Benefit of Continued Ballot Access Is Less Crucial for Long-Time Incumbents.

1. *Congressional Incumbents Receive Many Other Benefits.*

Long-time congressional incumbents are not ordinary candidates. Placed at their disposal are taxpayer-furnished staffs, expense accounts, offices in their districts, media broadcast studios and press aides, travel allowances, free postage privileges, free stationery, easy access to television news and talk shows, and abundant oppor-

[24] See *Storer* v. *Brown, supra*, 415 U.S. at 736 n.7 ("we note that the independent candidate who cannot qualify for the ballot may nevertheless resort to the write-in alternative provided by California law"); *Jenness* v. *Fortson, supra*, 403 U.S. at 434, 438 ("Georgia freely provides for write-in votes. . . . no limitation whatever . . . on the right of a voter to write in on the ballot the name of the candidate of his choice and to have that write-in vote counted"). In two special situations—where state election laws imposed unreasonably high filing fees, or effectively destroyed "the constitutional right of citizens to create and develop new political parties," *Norman* v. *Reed*, 112 S. Ct. 698, 705 (1992)—this Court held that the restriction violated the Fourteenth Amendment even when tempered by the write-in alternative. See *Anderson* v. *Celebrezze*, 460 U.S. 780, 799 n.26 (1983); *Lubin* v. *Panish*, 415 U.S. 709, 719 n.5 (1974); see also *id.* at 722 (Blackmun, J., joined by Rehnquist, J., concurring) ("I would regard a write-in procedure, free of fee, as an acceptable alternative").

tunities to perform constituent services that increase with seniority and encourage campaign contributions.[25]

> "Incumbent candidates, of course, can deliver more immediate legislative results than mere challengers. This fact enables them to raise much more money for the next campaign than their challengers, giving incumbents an enormous advantage in primary and general elections. They not only have more money; they have it much earlier, a factor that discourages many would-be challengers from even making the race. In 1986, an astounding ninety-eight percent of all House incumbents of both parties who ran for reelection were reelected. Equally astounding, over the past thirty years a weighted average of ninety percent of all House and Senate incumbents of both parties who ran for reelection were reelected, even at times when their own party lost control of the Presidency itself."

Lloyd N. Cutler, *Now Is the Time for All Good Men. . .*, 30 WM. & MARY L. REV. 387, 394-95 (1989) (footnote omitted).

Since World War II, the reelection advantages of congressional incumbents have expanded, and prolonged incumbency has burgeoned. In 1992, 88% of House incumbents and 82% of Senate incumbents who ran were reelected. See, *e.g.*, Frenzel, *Term Limits and the Immortal Congress*, BROOKINGS REV. 18, 21 (Spring 1992) (retired congressman cites overwhelming advantages of incumbency and need "to unrig a rigged system"); G. WILL, RESTORATION 73-89 (1992) (collecting data on sharp increase in congressional incumbency). What the voters who enacted Amendment 73 decided was simply

[25] See, *e.g.*, 39 U.S.C. §§ 3210, 3211, 3212 (franked mail, including "mass mailings"); 2 U.S.C. §§ 123b, 123b-1 (House and Senate recording studios); 2 U.S.C. § 58a (telecommunications services); 2 U.S.C. §§ 57, 58c (office expense allowances); 2 U.S.C. §§ 61-1, 332 (personal staffs); 2 U.S.C. § 72a (committee staffs); 2 U.S.C. §§ 43, 43b, 58 (travel allowances); 2 U.S.C. § 46b-1 (stationery); 2 U.S.C. §§ 57, 59 (offices in districts and home states). See also S. Res. 63, 103d Cong., 1st Sess. (1993) (authorizing U.S. Senate Counsel's representation of respondent Bumpers in this case, citing 2 U.S.C. § 288c(a)(1); see J.A. 89, 178).

not to continue to add the benefit of appearing on the printed ballot to the many other advantages multi-term incumbents already enjoy.[26]

The States have a well recognized interest in the fairness and openness of elections, and in encouraging "the potential fluidity of American political life." *Jenness* v. *Fortson*, 403 U.S. 431, 439 (1971). In advancing electoral objectives, they often distribute state benefits unequally among candidates. Many States have laws, of which the one in *Storer* is one example, designed to help major parties by discouraging "sore loser" or "spoiler" candidacies and "party raiding." *Burdick* v. *Takushi*, *supra*, 112 S. Ct. at 2066-67; *see also Rosario* v. *Rockefeller*, 410 U.S. 752, 761 (1973). Campaign finance laws now often restrict the contributions challengers are able to raise to increase their name recognition. *Cf. Buckley* v. *Valeo*, 424 U.S. 1 (1976) (upholding campaign-financing provisions of Federal Election Campaign Act). Certainly to try to limit the benefits some already governmentally advantaged candidates receive is not prohibited by the Constitution's listing of minimum qualifications for office in Article I.

2. *State Election Laws Often Unequally Favor Incumbents.*

The Arkansas plurality believed that by attempting to encourage challenges to incumbents, Amendment 73 ex-

[26] Eight other States by intiatives enacted restrictions on continued ballot access of long-time congressional incumbents. Ariz. Const., art. VII, § 18; Cal. Elec. Code § 25003; Fla. Const., art. 6, § 4; Mont. Const., art. IV, § 8; Neb. Const., art. XV, § 19; N.D. Cent. Code § 16.1-01-13.1; Wash. Rev. Code § 29.68; Wyo. Stat. § 22-5-104. Enforcement of the Washington statute has been enjoined by a district court, *Thorsted* v. *Gregoire*, *supra*, and the Nebraska provision after approval by 68% of the voters was held nevertheless invalid for insufficient signatures on the petition that put it on the ballot. *Duggan* v. *Beermann*, 245 Neb. 907, 515 N.W.2d 788 (1994). In addition, term limits for congressional incumbents have been adopted in six States. Colo. Const., art. XVIII, § 9; Mich. Const., art. 2, § 10; Mo. Const., art. III, § 45(a); Ohio Const., art. V, § 8; Ore. Const., art. II, § 20; S.D. Const., art. III, § 32.

ceeded "the general power of the states to regulate federal elections." P.C.A. 14a. But state laws affecting the conduct of congressional elections inevitably, and often designedly, influence results. Virtually any state election law—even determining the location of voting places, or how long the polls are open—will work to the advantage of some candidates over others. See *Burdick* v. *Takushi, supra,* 112 S. Ct. at 2063; *Anderson* v. *Celebrezze,* 460 U.S. 780, 788 (1983). Apart from congressional overruling, such laws are constrained not by Article I's minimum qualifications, but rather by the Fourteenth Amendment, which provides a check on arbitrary state regulations.

> "[W]hen a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions."

Burdick v. *Takushi, supra,* 112 S. Ct. at 2063-64, *quoting Anderson* v. *Celebrezze,* 460 U.S. 780, 788 (1983). Thus in *Moore* v. *McCartney,* 425 U.S. 946 (1976), this Court held no substantial federal question was presented by an appeal challenging term limits for state officials under the Fourteenth Amendment.[27]

[27] Federal courts and state supreme courts, with the exception of the district court in *Thorsted* v. *Gregoire, supra,* have invariably sustained state laws that prescribe actual term limits against First and Fourteenth Amendment challenges—just as the Arkansas court did here with respect to Amendment 73's term limits on state officials. P.C.A. 20a, 27a, 42a. "[T]he mere fact that a State's system 'creates barriers . . . tending to limit the field of candidates from which voters might choose . . . does not of itself compel close scrutiny.'" *Burdick* v. *Takushi,* 112 S. Ct. 2059, 2063 (1992), *quoting Bullock* v. *Carter,* 405 U.S. 134, 143 (1972). The highest courts of California, New York, and West Virginia have held that term limits have ample and compelling justification, and that they promote rather than impede the values the Fourteenth Amendment protects. They are neither arbitrary nor irrational, are content-neutral, and do not disable a protected class or disfavor particular beliefs.

> "Voters retain the ability to vote for any qualified candidate holding the beliefs or possessing the attributes they may desire in a public officeholder. Under these circumstances, First Amendment protection of political expression and promotion of the marketplace for ideas continue unabated."

Legislature v. *Eu,* 54 Cal. 3d 492, 519, 816 P.2d 1309, 1325 (1991), *cert. denied,* 112 S. Ct. 1292 (1992); *accord, Roth* v. *Cuevas,* 82 N.Y.2d 791, 624 N.E.2d 689 (1993), *affirming* 158 Misc. 2d 238, 603 N.Y.S.2d 962 (1993); *State ex rel. Maloney* v. *McCartney,* 159 W. Va. 513, 517, 223 S.E.2d 607, 611, *appeal dismissed sub nom. Moore* v. *McCartney,* 425 U.S. 946 (1976). *Cf. also* U.S. Constitution, Twenty-second Amendment. About half the states limit the terms of governors. *Miyazawa* v. *City of Cincinnati,* 825 F. Supp. 816, 821 (S.D. Ohio 1993). See generally *Munro* v. *Socialist Workers Party,* 479 U.S. 189 (1986); *American Party* v. *White,* 415 U.S. 767 (1974); *Jenness* v. *Fortson,* 403 U.S. 431 (1971).

[28] Arkansas limits ballot access to nominees of an organized political party by primary or convention, unless by petition of 3% of the electors (Ark. Const., amend. 29, § 5; Ark. Code Ann. § 7-7-103); prohibits primary losers from running as independents (Ark. Code Ann. §§ 7-7-103(f), 7-8-101); requires fees and pledges of party loyalty for access to a primary-election ballot (Ark. Code Ann. § 7-7-301); prohibits certain groups from ballot access (Ark. Code Ann. § 7-3-108); and requires notice of intention to be a write-in candidate (Ark. Code Ann. § 7-5-205). See Appendix F pp. 43a-53a, *infra.*

The Arkansas opinions did not explain why, if declining to continue to print the name of a multi-term incumbent on the ballot establishes a qualification like those in Article I, the same is not true also of Arkansas' (and forty-nine other States') many other laws that tightly restrict ballot access—such as Arkansas' law limiting places on the general-election ballot to party nominees unless sufficient voters petition, or its law prohibiting independent candidacies of primary losers.[28] It is difficult to imagine a state ballot law more outcome-determinative in general elections to Congress than the familiar laws that effectively restrict appearance on the ballot to primary winners.

In fact, this Court has held that state congressional election laws may take incumbency into account—by encouraging it. States may help incumbents by drawing congressional district lines so as to "avoid[] contests between incumbent Representatives." *Karcher* v. *Daggett,* 462 U.S. 725, 740 (1983). They may "aim[] at maintaining

existing relationships between incumbent congressmen and their constituents and preserving the seniority the members of the State's delegation may have achieved in the United States House of Representatives." *White* v. *Weiser*, 412 U.S. 783, 791 (1973).[20] The entire process of congressional redistricting—for which the States have primary responsibility, *Growe* v. *Emison*, 113 S. Ct. 1075, 1081 (1993)—is permeated with States' result-oriented decisions:

> "Politics and political considerations are inseparable from districting and apportionment. . . . District lines are rarely neutral phenomena. They can well determine what district will be predominantly Democratic or predominantly Republican, or make a close race likely. Redistricting may pit incumbents against one another or make very difficult the election of the most experienced legislator. The reality is that districting inevitably has and is intended to have substantial political consequences."

Gaffney v. *Cummings*, 412 U.S. 735, 753 (1973); see also *White* v. *Weiser*, *supra*, 412 U.S. at 795-96. This Court seldom has been persuaded that even the Fourteenth or Fifteenth Amendment requires overturning state districting laws that favor particular results, or even particular political parties. "The fact that district boundaries may have been drawn in a way that mimimizes the number of contests between present incumbents does not in and of itself establish invidiousness." *Burns* v. *Richardson*, 384 U.S. 73, 89 n.16 (1966). See also *Voinovich* v. *Quilter*, 113 S. Ct. 1149, 1156 (1993) (racial-majority districting under Voting Rights Act); *Davis* v. *Bandemer*, 478 U.S. 109 (1986).

Arkansas' own congressional districts have been explicitly arranged to minimize disruption to incumbents. The court in *Doulin* v. *White*, 535 F. Supp. 450, 452

[20] Madison told the Convention that he expected state legislatures acting under Article I, § 4, "so to mould their regulations as to favor the candidates they wished to succeed." 2 FARRAND 241. As a counterbalance Congress was given "controuling power" to override them. *Id.*

(E.D. Ark. 1982), repeatedly cited *White* v. *Weiser*, *supra*, in stressing that the districts selected "would disrupt existing patterns of constituency-representative relationships far less than Plan A." See also *Turner* v. *Arkansas*, 784 F. Supp. 585, 588 (E.D. Ark. 1991) (districting in 1991 made "as few changes as possible" to *Doulin* plan). If Article I's minimum qualifications do not stand in the way of state primary laws that keep many categories of candidates off the ballot, and state districting laws that protect incumbency, surely they do not prevent the people of Arkansas from trying to enlarge the political process by a law that favors no group or political view, but encourages new participation.

III. STATE LIMITS ON TERMS IN CONGRESS WOULD NOT VIOLATE ARTICLE I.

Although the voters of Arkansas did not decide to enact term limits for members of Congress, they could constitutionally have done so. Nothing in the Constitution says otherwise; on the contrary, the Constitution confirms broad state power to regulate elections to Congress. Nor do the usual rules of constitutional construction suggest such a prohibition by implication. Moreover, laws enacted at the time of the adoption of the Constitution are "contemporaneous and weighty evidence of its true meaning." *Wisconsin* v. *Pelican Ins. Co.*, 127 U.S. 265, 297 (1888). The contemporary practice confirms that the States may, consistently with Article I, set term limits for their representatives in Congress.

A. Contemporaneous Practice Emphatically Confirmed State Power.

1. *The States Have Enacted Additional Qualifications Since 1788.*

(a) *The Early Laws.*

As soon as they ratified the Constitution, the States began to pass laws regulating elections to the House of Representatives. And many of those laws imposed additional qualifications of many kinds for congressional office. Virginia, the largest and most populous State,

added both a land-ownership requirement and an additional residence requirement. It provided that the voters

> "shall assemble at their respective county courthouses on the second day in *February* next, and then and there vote for some discreet and proper person, *being a freeholder*, and who shall have been *a bona fide resident for twelve months within such district*, as a member to the House of Representatives for the United States." [30]

Georgia allowed voting only for someone who "shall be a resident of three years standing in the district," North Carolina for one year in the district. Maryland and Massachusetts also required that candidates be residents of their respective districts. Delaware required voting for two candidates, at least one from a different county. New Jersey established a preliminary nominating process, and provided that "no Person whatever shall be set up as a Candidate on the said Day of Election, but the Persons so nominated and returned as aforesaid." Connecticut did the same. Tennessee, admitted in 1796, included in its election law for Members of Congress a requirement "That the person elected shall have been a citizen or resident of this State, three years next immediately preceding the day of election." Some of the States described these as regulations of times, places and manner.[31] In addition, Maryland specified residency locations for each senator, and Pennsylvania's congressional term-limits requirement continued in effect.[32] Congress never exercised

[30] Va. Act of Nov. 20, 1788, ch. 2, § II (second and third emphases supplied); see also Va. Act of Dec. 26, 1792, ch. 1, § II.

[31] Ga. Act of Jan. 23, 1789, p. 247; N.C. Act of Dec. 16, 1789, ch. 1, § I; Md. Act of Dec. 22, 1788, ch. 10, § VII; Mass. Res. of Nov. 19, 1788, ch. 49; Del. Act of Oct. 28, 1788; N.J. Act of Nov. 21, 1788, ch. 241, § 3; Conn. Res. of Oct. 9, 1788; Conn. Act of Jan. 1, 1789; Tenn. Act of Aug. 3, 1796, ch. 1, § 2. See Appendix C, pp. 8a-18a, *infra; cf. Quinn* v. *Millsap*, 491 U.S. 95 (1989) (property qualification for office violates Fourteenth Amendment).

[32] See nn. 4, 7, *supra*; Pa. Const., § 11 (1776) ("No man shall sit in congress longer than two years successively, nor be capable of reelection for three years afterwards").

its power under Article I, § 4, to override any such state laws.

The state election laws are an instance of "the contemporaneous practical exposition of the Constitution being too strong and obstinate to be shaken or controlled." *McPherson* v. *Blacker*, 146 U.S. 1, 27 (1892). "As this Court has stated from its first Due Process cases, traditional practice provides a touchstone for constitutional analysis." *Honda Motor Co.* v. *Oberg*, 114 S. Ct. 2331, 2339 (1994); see also *J.W. Hampton, Jr. & Co.* v. *United States*, 276 U.S. 394, 412 (1928); *Stuart* v. *Laird*, 1 Cranch 299, 309 (1803) (early practice "an irresistible answer"). Here "a page of history is worth a volume of logic." *New York Trust Co.* v. *Eisner*, 256 U.S. 345, 349 (1921); see also *Jackman* v. *Rosenbaum Co.*, 260 U.S. 22, 31 (1922).

(b) *The Current Laws.*

Over the years the subjects of state laws barring from congressional election have multiplied. Familiar examples are widespread state requirements that a candidate must be a registered voter—laws that thus sweep in all the various grounds for which States deny the franchise.[33] Among those grounds are conviction for felony or particular crime,[34] although some States simply deny election to felons outright.[35] Laws barring mental incompetents are similar.[36] A few States require residency in the

[33] *E.g.*, Nev. Const., art. 15, § 3; Miss. Const., art. 12, § 250; Appendix G, pp. 54a, 57a-67a, *infra*. Until the Nineteenth Amendment, this was the means by which most States prevented women from being candidates. For a summary of nineteenth-century state restrictions, see *Minor* v. *Happersett*, 21 Wall. 162, 172-73, 176-77 (1875).

[34] N.J. Stat. Ann. §§ 19:4-1, 19:13-8; Ala. Const., art. VIII, § 182; Ala. Code § 17-16-12; Appendix G, pp. 57a-65a, *infra*.

[35] *E.g.*, Ark. Code Ann. § 16-90-112(b); Ariz. Rev. Stat. Ann. § 13-904; N.H. Rev. Stat. Ann. § 607-A:2. Felons may constitutionally be disenfranchised. *Richardson* v. *Ramirez*, 418 U.S. 24 (1974).

[36] *E.g.*, Ariz. Rev. Stat. Ann. §§ 16-101, 16-311; N.D. Const., art. 2, § 2; N.D. Cent. Code § 44-01-01; Appendix G, pp. 65a-67a, *infra*.

congressional district;[37] some add requirements of specified time as a state resident[38] (often indirectly through requirements that candidates must be voters). There are numerous particular variations as well—for example, requirements of loyalty oaths, or bans on candidacy for two offices.[39] Arkansas disqualifies from seeking re-election any Senator appointed by the governor; it also bars from appointment as Senator the governor, lieutenant governor, and their relatives. Ark. Const., amend. 29, § 2.

State laws that deny ballot access except to persons who win a party nomination or secure a substantial number of petition signatures are nearly universal.[40] They are laws that this Court holds States have an "undoubted right to require." *Munro* v. *Socialist Workers Party*, 479 U.S. 189, 194 (1986); *American Party* v. *White*, 415 U.S. 767 (1974); *Jenness* v. *Fortson*, 403 U.S. 431 (1971). Access to primary-election ballots is also tightly restricted, with requirements of time in the party, and disaffiliation from others. Primary-election losers are often then barred from the general election ballot, as by the California law this Court upheld in *Storer* v. *Brown*, and by Arkansas.[41]

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[37] *E.g.*, Idaho Code § 34-1904; Nev. Rev. Stat. § 293.1755; Appendix G, pp. 54a-55a, *infra*.

[38] *E.g.*, Idaho Code §§ 34-604, 34-605; Colo. Rev. Stat. § 1-4-802; Appendix G, pp. 55a-57a, *infra*.

[39] *E.g.*, Pa. Stat. Ann., tit. 25, § 2938.1; Maine Rev. Stat. Ann., tit. 21-A, § 331(3); Appendix G, pp. 67a-69a, 86a-87a, *infra*.

[40] See, *e.g.*, Ark. Const., amend. 29, § 5; Ark. Code Ann. §§ 7-7-301 *et seq.*; Cal. Elec. Code §§ 6831, 6838; Ind. Code § 3-8-2-8; N.Y. Elec. Law § 6-142; Appendix G, pp. 74a-75a, *infra*; see also, *e.g.*, *Gardner* v. *Ray*, 154 Ky. 509, 157 S.W. 1147 (1913) (statute prescribing qualifications for party nomination is constitutional); *Secretary of State* v. *McGucken*, 244 Md. 70, 222 A.2d 693 (1966) (candidates required to appoint campaign treasurer).

[41] *E.g.*, Ark. Code Ann. § 7-7-103(f); Colo. Rev. Stat. § 1-4-105; Ill. Ann. Stat., ch. 10, § 5/10-2; Kan. Stat. Ann. § 25-202(c); Md. Ann. Code, art. 33, § 8-2; Neb. Rev. Stat. § 32-516; N.H. Rev. Stat. Ann. § 659:91-a; N.C. Gen. Stat. § 163-123(e); N.D. Cent. Code § 16.1-13-06; S.C. Code Ann. § 7-11-210; Tenn. Code Ann. § 2-5-101(f); see Appendix G, pp. 81a-85a, *infra*.

Some such "spoiler" laws even bar subsequent candidacy as write-ins.[42]

This Court has also upheld state laws that broadly forbid large groups of governmental officials and employees from running for Congress. See *Broadrick* v. *Oklahoma*, 413 U.S. 601 (1973); *cf. Clements* v. *Fashing*, 457 U.S. 957, 972 (1982) (automatic loss of state office upon becoming candidate for offices that included Congress). In those First and Fourteenth Amendment cases, the litigants did not even bother to assert that Article I could prevent such prohibitions of congressional candidacy, and this Court gave no hint of any such concern.[43] It is "settled doctrine" that "a public body may forbid its employees to run for elective office," and that such restrictions may apply to "policymaking officials." *Wilbur* v. *Mahan*, 3 F.3d 214, 219 (7th Cir. 1993) (Easterbrook, J., concurring); see also, *e.g.*, *Smith* v. *Ehrlich*, 430 F. Supp. 818 (D.D.C. 1976) (three-judge court) (private persons receiving government funds disqualified).[44]

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[42] *E.g.*, Ga. Code Ann. § 21-2-133(d); Neb. Rev. Stat. § 32-516; N.C. Gen. Stat. § 163-123(e).

[43] The Oklahoma statute upheld in *Broadrick* provided that "No employee in the classified service shall be . . . a candidate for nomination or election to any paid public office . . . ." See 413 U.S. at 604 n.1. The Hatch Act forbids running as a candidate for "partisan political office." See 5 U.S.C. §§ 7322(1), 7323(a)(3). It was upheld in *U.S. Civil Service Comm'n* v. *National Ass'n of Letter Carriers*, 413 U.S. 548 (1973), and *United Public Workers* v. *Mitchell*, 330 U.S. 75 (1947). See generally Appendix G, pp. 69a-74a, *infra*.

[44] A handful of state disqualification laws were held unconstitutional in decisions offering little analysis except the assertion that States could not add qualifications, and no attempt to deal with the many other instances in which States did. *E.g.*, *Danielson* v. *Fitzsimmons*, 232 Minn. 149, 44 N.W.2d 484 (1950) (felony disqualification); *Exon* v. *Tiemann*, 279 F. Supp. 609 (D. Neb. 1968) (district residency requirement); see pp. 46-47, *infra*. For a listing of the variety of state qualification laws as of 1889, see Brief of Petitioner in No. 93-1828, Appendix C.

2. *Congress Has Enacted Additional Disqualifications Since 1789.*

Congress itself has not hesitated to pass statutes that disqualify categories of individuals from public office. It began to do so in the very first session of the First Congress in 1789.[45] It did so again in 1790[46] and 1792 and 1793.[47] It continued thereafter regularly to enact laws that barred persons convicted of specified crimes from holding federal office.[48] Several of these disqualification laws, indeed, have applied only to members of Congress. *E.g.*, Act of July 16, 1862, ch. 180, 12 Stat. 577 (Member of Congress taking money for procuring government contracts); Act of June 11, 1864, ch. 119, 13 Stat. 123

[45] Act of Sept. 2, 1789, ch. 12, § 8, 1 Stat. 67 (Treasury official acting with conflict of interest "forever thereafter incapable of holding any office under the United States"). Seventeen of the Members of the First Congress, including Madison, had been delegates to the Constitutional Convention. *Lynch* v. *Donnelly*, 465 U.S. 668, 674 (1984). They recognized that "the whole business of Legislation was a practical construction of the powers of the Legislature . . . ." 2 ANNALS OF CONG. 1960 (1791) (Gales & Seaton ed.) (Rep. Sedgwick); see also 1 *id.* at 514 (Rep. Madison). "[T]he First Congress was a sort of continuing constitutional convention." Currie, *The Constitution in Congress*, 61 U. CHI. L. REV. 775, 777 (1994). Its actions "have always been regarded . . . as of the greatest weight in the interpretation of that fundamental instrument." *Myers* v. *United States*, 272 U.S. 52, 174-75 (1926). See also *Marsh* v. *Chambers*, 463 U.S. 783, 790 (1983); *Carroll* v. *United States*, 267 U.S. 132, 150-53 (1925).

[46] Act of April 30, 1790, ch. 9, § 21, 1 Stat. 117 (bribery of judge). This provision reflects that the First Congress "did not understand impeachment to be the sole avenue for future disqualification of current officeholders." Currie, *supra* n.45, at 833 n.342.

[47] Act of May 8, 1792, ch. 37, § 12, 1 Stat. 281 (extending penalties of 1789 Act to other officials); Act of Dec. 31, 1792, ch. 1, § 26, 1 Stat. 298 (offenses by collectors and other officers), see 46 U.S.C. § 322; Act of Feb. 13, 1793, ch. 8, § 29, 1 Stat. 315 (same), see 46 U.S.C. § 59.

[48] See, *e.g.*, Act of Feb. 26, 1853, ch. 81, § 5, 10 Stat. 170; *id.*, § 6, 10 Stat. 171; Act of July 2, 1862, ch. 128, 12 Stat. 502; Act of July 17, 1862, ch. 195, §§ 1-3, 12 Stat. 589; Act of Feb. 25, 1865, ch. 52, §§ 1, 2, 13 Stat. 437, now 18 U.S.C. §§ 592, 593.

(Member of Congress accepting compensation when United States is a party); Act of March 3, 1911, ch. 231, § 144, 36 Stat. 1136, as amended, 18 U.S.C. § 204 (1988 ed.) (Member of Congress practicing in Claims Court). Noting such early federal legislation, Professor Corwin rejected "the dogmatic assertion that anybody who possesses the constitutionally stipulated qualifications of a President is under all circumstances qualified in the contemplation of the Constitution to be President." E. CORWIN, THE PRESIDENT: OFFICE AND POWERS 33 (4th rev. ed. 1957). As was explained in *De Veau* v. *Braisted*, 363 U.S. 144, 159 (1960) (Frankfurter, J., announcing judgment),

> "Federal law has frequently and of old utilized this type of disqualification . . . . [A] large group of federal statutes disqualify persons 'from holding any office of honor, trust, or profit under the United States' because of their conviction of certain crimes, generally involving official misconduct. 18 U.S.C. §§ 202, 205, 206, 207, 216, 281, 282, 592, 1901, 2071, 2381 [1958 ed.]. For other examples in the federal statutes see 18 U.S.C. § 2387; 5 U.S.C. § 2282; 8 U.S.C. § 1481 [1958 ed.]."

Several such provisions are in the current *United States Code*.[49]

[49] They include 18 U.S.C. § 201(b)(4) (witness seeking or accepting bribe); 18 U.S.C. § 592 (keeping troops at polls); 18 U.S.C. § 593 (member of armed forces who interferes with elections); 18 U.S.C. § 1901 (revenue officer who trades in public property); 18 U.S.C. § 2071(b) (custodian who destroys public records); 18 U.S.C. § 2381 (treason); 18 U.S.C. § 2383 (rebellion or insurrection); 5 U.S.C. § 7311 (striking against the government or advocating its overthrow); 5 U.S.C. § 7313 (felony riot or disorder); 46 U.S.C. §§ 59, 322 (willful neglect by maritime officers). Until recent amendments, several other crimes also were punished by disqualification from office. See, *e.g.*, 18 U.S.C. §§ 203(a), 204 (1988 ed); see also Federal Election Campaign Act Amendments, Act of Oct. 15, 1974, § 407, 88 Stat. 1263, 1290 (reporting-requirement violator "shall be disqualified from becoming a candidate in any future election for Federal office" for a stated period; repealed by Act of May 11, 1976, §§ 111, 114, 90 Stat. 475, 486, 495, but with proviso

B. No Prohibition on Added State Qualifications Is Implied in the Constitution.

1. *Withdrawals of State Power Are Rarely Implied.*

The Arkansas court's holding that an unstated negative implication of Article I bars Amendment 73 reopens a very old question: when, if ever, will silence of the Constitution be held nevertheless to prohibit state power? "The principles which the Court has followed in construing state power were stated by Alexander Hamilton in Number 32 of The Federalist." *Goldstein* v. *California*, 412 U.S. 546, 552 (1973):

> "[A]s the plan of the [Constitutional] convention aims only at a partial union or consolidation, the State governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, *exclusively* delegated to the United States. This exclusive delegation, or rather this alienation, of State sovereignty, would only exist in three cases: where the Constitution in express terms granted an exclusive authority to the Union; where it granted in one instance an authority to the Union, and in another prohibited the States from exercising the like authority; and where it granted an authority to the Union, to which a similar authority in the States would be absolutely and totally *contradictory* and *repugnant*."

Id. at 552-53, *quoting* THE FEDERALIST No. 32 at 200 (emphasis and bracketed text in original). This Court through Chief Justice Marshall early explained that prohibitions on state power to legislate are not to be implied when the Constitution does not state them:

> "[I]t was neither necessary nor proper to define the powers retained by the states. These powers proceed,

that repeal did not affect penalties already imposed). See generally Appendix E, pp. 25a-42a, *infra*. A dictum in *Burton* v. *United States*, 202 U.S. 344, 369-70 (1906), suggested that state legislatures' authority was so great that Senators did not even hold office under the government of the United States; so extreme a view would be inconsistent with a host of other decisions, *e.g.*, *United States* v. *Classic*, *supra*, 313 U.S. at 315; *Smiley* v. *Holm*, *supra*, 285 U.S. at 366-67.

> not from the people of America, but from the people of the several states; and remain, after the adoption of the constitution, what they were before, except so far as they may be abridged by that instrument."

Sturges v. *Crowninshield*, 4 Wheat. 122, 193 (1819) (state insolvency laws not supplanted by federal bankruptcy power); see also *Houston* v. *Moore*, 5 Wheat. 1 (1820) (states may discipline militia in federal service).[50] As Chief Justice Marshall also explained, when the Framers intended to withdraw a power from the States, they knew how to say so unambiguously. *E.g.*, Article I, § 10. When the Constitution has prohibitions,

> "The question of their application to states is not left to construction. It is averred in positive words."

Barron v. *Baltimore*, 7 Pet. 243, 249 (1833).[51] Concurrent state power is the usual expectation. *Cf. Tafflin* v. *Levitt*, *supra*, 493 U.S. at 458.

Only in a very few instances has this Court cautiously been willing to imply from constitutional silence a limitation on state legislative power. Most celebrated is the "audacious" [52] doctrine of the "dormant" Commerce

[50] See also *McCulloch* v. *Maryland*, 4 Wheat. 316, 435 (1819), holding that "the power of taxation in the general and state governments is acknowledged to be concurrent," but that the Supremacy Clause of Article VI prevents states from taxing an instrumentality of the federal government.

[51] Thomas Jefferson, whose political views on other issues were often unlike Marshall's, reasoned the same way. Letter to Joseph C. Cabell, Jan. 31, 1814, in 11 WORKS OF THOMAS JEFFERSON 381 (P. Ford ed. 1905). *Accord*, *Golden* v. *Prince*, 10 Fed. Cas. 542, 543 (C.C.D. Pa. 1814) (No. 5,509) (Justice Washington on circuit).

[52] F. FRANKFURTER, THE COMMERCE CLAUSE 19 (1937) (observing that such an implied prohibition "would hardly have been publicly avowed in support of adoption of the Constitution"). *Cf. Atascadero State Hospital* v. *Scanlon*, 473 U.S. 234, 239 n.2 (1985) (Eleventh Amendment): "The Constitution never would have been ratified if the States and their courts were to be stripped of their sovereign authority except as expressly provided by the Constitution itself." Margins in several state ratifying conventions were

Clause. *Cooley* v. *Board of Wardens*, 12 How. 299 (1852), after reaffirming THE FEDERALIST No. 32, held that States were excluded from regulating those aspects of interstate commerce that "are in their nature national, or admit only of one uniform system, or plan of regulation." 12 How. at 318-19. Such a negative implication in the Commerce Clause was in many respects unique, and it reflected that a leading reason the Philadelphia Convention had assembled was to bring an end to interstate trade wars; otherwise, as Justice Jackson wrote for the Court, "the states were quite content with their several and diverse controls over most matters." *H.P. Hood & Sons, Inc.* v. *Du Mond*, 336 U.S. 525, 534 (1949). And even the "dormant" Commerce Clause leaves substantial range for state legislation. See, *e.g.*, *Barclays Bank PLC* v. *Franchise Tax Board*, 114 S. Ct. 2268 (1994); *California* v. *Thompson*, 313 U.S. 109, 113 (1941).

Generally, the Constitution expects Congress, rather than some implied negative prohibition, to protect federal interests against the States. *E.g.*, *Kewanee Oil Co.* v. *Bicron Corp.*, 416 U.S. 470, 479 (1974); *accord*, *Goldstein* v. *California*, *supra*, 412 U.S. at 571. And here, unlike provisions such as the Commerce Clause that never mention the States, Article I actually specifies in § 4 that, unless Congress supersedes, the States are to regulate the election of their representatives in Congress. If States abuse their power, as Hamilton recognized, Article I specifically assigns the solution to Congress. THE FEDERALIST No. 59 at 399.

Yet glaringly absent in this case is any action by Congress with respect to Amendment 73—even though

close; *e.g.*, Massachusetts (187-168); New York (30-27); Virginia (89-79). See 2 ELLIOT 181, 413; 3 *id.* 654. See also *Tyler Pipe Industries, Inc.* v. *Washington State Dep't*, 483 U.S. 232, 263 (1987) (Scalia, J., concurring in part and dissenting in part) (questioning doctrine of "dormant" Commerce Clause). A constitutional prohibition of a state law with "great potential for disruption or embarrassment" of foreign affairs was implied in *Zschernig* v. *Miller*, 389 U.S. 429, 435 (1968).

it is Congress and its Members who presumably are directly affected. With ample and explicit constitutional authority for Congress to protect any federal interest, there is all the less reason to ask this Court to displace the role assigned Congress, and stretch to imply an unstated constitutional prohibition on state laws. The fact that Congress has not chosen to restrict such state laws "is . . . evidence that the preeminent speaker decided to yield the floor to others." *Barclays Bank PLC* v. *Franchise Tax Bd.*, *supra*, 114 S. Ct. at 2285.

2. *Amendment 73 Does Not Affect Article I's Disqualifications.*

The purpose of requiring minimum age, inhabitancy and citizenship was to ensure that Representatives were mature, familiar with the States they represent, and adequately attached to the United States. See, *e.g.*, 1 FARRAND 375 (Mason); 2 *id.* 216-17 (Mason); 2 *id.* 268 (Gerry). None of those objectives is compromised in the slightest by Amendment 73, which does not contradict or seek to alter any of the disqualifications in Article I. Amendment 73 does not even deal with age, citizenship or inhabitancy. Even if Article I were read to withdraw all state legislative power on those three subjects, that would not mean that it invalidated state qualifications as to matters like long incumbency that Article I does not address at all.[53]

It is difficult to conceive how the decision of the people of a State ahead of time not to return persons to Congress as their representative after many years of incumbency is any more a threat to the constitutional structure than if the people decide in a particular election not to re-elect a particular individual. Obviously the Framers did not believe it essential that all Members of Congress have sit for identical tenures, and of course Members

[53] Nor does Amendment 73 attempt to diminish the authority of each House under Article I, § 5, to judge its members' "Qualifications." By *Powell* v. *McCormack*, 395 U.S. 486 (1969), the latter term refers only to those listed in the Constitution itself. See p. 44, *infra*.

never have. The voters of Arkansas are regulating their own procedure for choosing representatives, no one else's. They are not threatening to alter the federal system. They are simply trying, by offsetting some of the advantages conferred on incumbents, to affect the character of representation the people of their State receive.

3. *Citizenship and Residency Were Determined by State Laws.*

The plurality of the Arkansas Supreme Court nevertheless believed that "if there is one watchword for representation of the various States in Congress, it is uniformity. . . . Piecemeal restrictions by State would fly in the face of that order." P.C.A. 14a. A concurring justice thought that "the specter of the hodge-podge of qualifications which a contrary holding might engender is daunting enough to swing the balance." P.C.A. 41a.

But the Framers did not expect uniformity.[54] They began by leaving voter qualifications for the House entirely up to the States, subject to the authority of Congress to enact laws requiring more uniformity.[55] That provision "was intended to avoid the consequences of declaring a single standard for exercise of the franchise in federal elections." *Tashjian* v. *Republican Party*, 479 U.S. 208, 227 (1986). And two of the three minimum requirements in Article I, §§ 2 and 3—citizenship and inhabitancy—at the time the Constitution was adopted depended entirely on State law.[56]

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[54] Hamilton expected a "material diversity" reflecting "diversity in the state of property, in the genius, manners, and habits of the people of the different parts of the union." THE FEDERALIST No. 60 at 404.

[55] James Madison explained in the Virginia convention that uniformity would be a responsibility of Congress, and that the states were "best acquainted with the situation of the people, subject to the controul of the general government, in order to enable it to produce uniformity, and prevent its own dissolution." 3 FARRAND 311-12.

[56] No federal definition of United States citizenship was established until the Fourteenth Amendment in 1868. The first proposed

When the Constitution demands uniformity, it generally says so—as in the authorization for a national bankruptcy law and naturalization law, and the requirement that State ports be treated equally. Art. I, § 8, cl. 4; Art. I, § 9, cl. 6. No such requirement is to be found in Article I, § 2 or § 3. If anything, by specifically authorizing state laws both in § 2 and § 4, Article I leaves the strong inference that in this area uniformity was not expected.

4. *Other "Qualification" Clauses Do Not Impliedly Bar State Laws.*

"[T]he Constitution's terms are illuminated by their cognate provisions." *Freytag* v. *Commissioner*, 111 S. Ct. 2631, 2644 (1991); see *Buckley* v. *Valeo*, *supra*, 424 U.S. at 124. No negative implication barring additions has been read into other "qualification" provisions of the Constitution:

—Article I, § 2, cl. 1, explicitly establishes the qualifications of voters for the House as those each State sets for the most numerous branch of its legislature. Yet the States are not prohibited by that provision or the Seventeenth Amendment from adopting voter qualifications for federal elections that are not identical to those for state elections. *Tashjian* v. *Republican Party*, 479 U.S. 208, 229 (1986).

—Also in spite of the voter qualifications established in Article I, § 2, Congress under Article I, § 4, may set a different age from what the States adopted. *Oregon* v.

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naturalization law had a clause requiring one year of residency for citizenship; a congressman argued that Article I "had expressly said how long they should reside among us before they were admitted to seats in the Legislature; the propriety of annexing any additional qualifications is therefore much to be questioned." 1 ANNALS OF CONG. 1149 (1790) (Rep. Lawrence). But James Madison responded that "there is no doubt we may, and ought to require residence as an essential." *Id.* at 1150. Concern was expressed by all, however, as to whether the federal legislation would interfere with powers reserved to the States, and the provision was dropped. *Id.* at 1149-64.

Mitchell, 400 U.S. 112, 117-18 (1970) (Black, J., announcing judgment).

—Just as Article I disqualifies certain persons from serving in Congress, so Article II, § 1, cl. 2, disqualifies certain persons—Senators, Representatives, and others holding federal office—from being Presidential electors. Yet from the beginning, some states in addition required residency within a district, or even a county, for Presidential electors,[57] and two added landed property requirements.[58] This Court unhesitatingly upheld the States' authority to require election by district in *McPherson* v. *Blacker*, 146 U.S. 1, 27-35 (1892). Restrictions on state power to choose Presidential electors, this Court has held, must be found in the Fourteenth Amendment and similar provisions. *Williams* v. *Rhodes*, 393 U.S. 23, 29 (1968).

C. State Power Was Not Questioned When the Constitution Was Adopted.

1. *The Constitutional Convention.*

From the surviving records of Philadelphia, these points are clear:

(1) The Framers deleted a provision to make the qualifications in Article I exclusive.

(2) The Framers declined to add to the Constitution either

(a) a national requirement of property ownership or financial standing, or

(b) a national test for citizenship, or

(c) national term limits.

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[57] Mass. Res. of Nov. 19, 1788 (district residency); Va. Act. of Nov. 17, 1788 (same); Del. Act of Oct. 28, 1788 (county residency). Several states included requirements of state residency. N.H. Act of Nov. 12, 1788; N.J. Act of Nov. 21, 1788; Pa. Act of Oct. 4, 1788. Maryland required that five Presidential electors be from the Western Shore, and three from the Eastern Shore. Md. Act of Dec. 22, 1788. See Appendix D, pp. 19a-24a, *infra*.

[58] N.J. Act of Nov. 21, 1788, § 8; Va. Act of Nov. 17, 1788.

(3) Some of the delegates expressed the belief that *Congress* would not be able to add qualifications for its own members; but neither they nor any other delegate ever questioned the power of the *States* to do so.

1. Bearing directly on the present case was a change made in the wording of what became Article I, § 2. The provision was drafted in the Committee of Detail, which wrote most of the Constitution. As reflected in the notes of Edmond Randolph, one of the Committee members, the provision originally read:

> "5. The qualifications of (a) delegates shall be the age of twenty five years at least, and citizenship: (*and any person possessing these qualifications may be elected except*)"

2 FARRAND 139 (second emphasis supplied). If that language, or language like it, had been adopted, the Constitution would be a different document, and its listed disqualifications would exclude any others. But that language was *not* adopted. The exclusivity clause was *deleted* by the Committee. *See id.* at 178, 137 n.6. Thus the Framers rejected the very provision that the Arkansas court implied and added to the Constitution.[59]

2. So distrustful were some delegates of long incumbency that they briefly considered adopting a national term limits requirement in 1787, then dropped it as "entering too much into detail for general propositions." 1 FARRAND 50-51; see also *id.* 20, 210, 217. A version of such a provision had been part of the Articles of Confed-

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[59] Later, in the last draft, the Committee of Style changed the phrasing to the negative ("No person shall . . .") of the final version. The negative phrasing appears further confirmation that the provisions were simply setting minimums. This Court in *Powell* v. *McCormack*, *supra*, concluded that the Committee of Style had not intended to make a change of substance. 395 U.S. at 538-39. The negative wording did reflect, however, the earlier change of substance that had occurred when the Committee of Detail (which was charged with substantive aspects) had deleted the clause that would have made Article I, § 2's qualifications exclusive. The negative phrasing confirmed that decision.

eration,[60] and several States added limitations of their own. In the end the Framers put their trust in the frequent elections for the House which they adopted, concluding that a national constitutional requirement of "rotation" would not be necessary. 1 FARRAND 210, 217. Madison opposed a national requirement, and expressed confidence that "new members . . . would always form a large proportion" of the House of Representatives. 1 FARRAND 361. For most of this country's history, that faith of the Framers proved essentially correct. More recently it has not.

3. Although the Convention's discussion of proposed national term limits was brief, consideration of proposals that the Constitution require property ownership or disqualify debtors, or that Congress be specifically authorized to do so, was more extended. At no time did this discussion address state power to set qualifications. Rather, there was concern that national rules on those subjects would be too sweeping, and could not adequately reflect local conditions. 2 FARRAND 121, 122, 126. When it was proposed that Congress be authorized to enact property requirements, some delegates saw danger in allowing *the Congress,* with its inherent conflict of interest, to add qualifications that might be designed to benefit its incumbents. Madison worried, for example, about "vesting an improper & dangerous power in the [federal] Legislature," and others expressed concern that if Congress were "composed of any particular description of men, of lawyers for example, . . . the future elections might be secured to their own body." 2 FARRAND 250. In that context Madison urged that

> "The qualifications of electors and elected were fundamental articles in a Republican Govt. and ought to be fixed by the Constitution. If the [federal] Legislature could regulate those of either, it can by degrees subvert the Constitution."

[60] Articles of Confed., Art. V, provided for delegates to Congress to serve not more than "three years in any term of six years." Several states imposed additional limits. See nn. 7, 17, *supra*; see also Brief of Petitioner in No. 93-1828, Appendix B.

2 FARRAND 249-250 (emphasis supplied). As this Court has pointed out, "Madison's argument was not aimed at the imposition of a property qualification as such, but rather at the *delegation to the Congress* of the discretionary power to establish any qualifications." *Powell* v. *McCormack, supra,* 395 U.S. at 534 (emphasis supplied). When the handful of disqualifications in Article I was adopted, no one said they were exclusive, much less put such a proposition to a vote.

4. The delegates at all times recognized that the requirement of citizenship simply left the standard up to the varying laws of the States, subject to whatever naturalization laws Congress might enact. Hamilton argued for requiring "merely Citizenship & inhabitancy," arguing that "[t]he right of determining the rule of naturalization will then leave a discretion to the Legislature on this subject." 2 FARRAND 268. Madison agreed. *Id.*

5. There were several comments that the list of disqualifications should not be too long or detailed, lest it be misconstrued as having prevented further legislative action on the subject.

> "Mr. Elseworth was for disagreeing to the remainder of the clause disqualifying public debtors; *and for leaving to the wisdom of the Legislature* and the virtue of the Citizens, the task of providing agst. such evils."

2 FARRAND 126 (emphasis supplied). John Dickinson "was agst. any recital of qualifications in the Constitution" because "[i]t was impossible to make a compleat one;" he worried that someone might argue that "a partial one would by implication tie up the hands of the Legislature from supplying the omissions." *Id.* 123. And James Wilson's objection to a specific provision authorizing Congress to set property qualifications was that "this particular power would constructively exclude every other power of regulating qualifications." *Id.* 251.

Thus in the surviving records of the drafting and ratification of the Constitution, although some delegates may

have doubted the power of *Congress*, there was not a single person who questioned the authority of the *States* to continue to set qualifications for their representatives to the national legislature. In fact, language to make the disqualifications in Article I exclusive was deleted.

2. *The Ratifying Conventions and* The Federalist.

What is striking in the state ratifying conventions is that the power granted Congress in Article I, § 4, was extremely controversial; the power of the States was not. Although opponents of the Constitution were quick to complain of every perceived limitation on state power, none suggested that the States were being denied the power to set qualifications for their representatives in Congress. The objections were to the breadth of the power in Article I, § 4, which it was feared the Congress would use to pass laws stripping the States of their control of elections to Congress. See p. 10, *supra*. *The Federalist* responded that the congressional power was essential to override what the States might do. See THE FEDERALIST No. 59 at 399, 402-03 (Hamilton). More generally, in *The Federalist* No. 32, quoted by Chief Justice Marshall and many times since, see pp. 32-34, *supra*, Hamilton reassured that unstated restrictions on state power would not be implied. With respect to congressional elections in particular, Madison assured that

> "The election of the President and Senate, will depend in all cases, on the Legislatures of the several States. And the election of the House of Representatives, will equally depend on the same authority in the first instance; and will probably, for ever be conducted by the officers and according to the laws of the States."

Id. No. 44 at 307. Hamilton reiterated that the Framers "have submitted the regulation of elections for the Fœderal Government, in the first instance, to the local administrations." *Id.* No. 59 at 399.[61]

[61] "The new Constitution gives the people a fair opportunity to elect their Representatives for the general legislature. The state legislatures are to make the regulations and arrangements for the choice; and to make the privilege still more secure, these regulations are subject to the revision of the general legislature." *The Republican*, Jan. 7, 1788, in 3 DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 530 (M. Jensen ed. 1978).

When critics said Congress would too much favor the wealthy, Hamilton and Madison responded that *the Constitution* imposed minimal tests for membership and did not require any property qualifications, either for voters or members. Hamilton also believed that *Congress* would not be able to add qualifications:

> "The truth is that there is no method of securing to the rich the preference apprehended but by prescribing qualifications of property *either for those who may elect or be elected*. But this forms no part of the power to be conferred *upon the national government*. Its authority would be expressly restricted to the regulation of the *times*, the *places*, and the *manner* of elections. The qualifications *of the persons who may choose or be chosen*, as has been remarked upon another occasion, are defined and fixed in the constitution, and are unalterable by the [federal] legislature."

Id. No. 60 at 408-09 (some emphases supplied). Madison had said much the same thing at the Convention, opposing the proposal to empower *Congress* to set property qualifications:

> "The qualifications *of electors and elected* were fundamental articles in a Republican Govt. and ought to be fixed by the Constitution. If the [federal] Legislature could regulate those of either, it can by degrees subvert the Constitution."

2 FARRAND 249-50 (emphasis supplied).

By their own terms, these comments on the powers of Congress could not have been denying state power. For in each instance when Madison and Hamilton referred to qualifications being "fixed" by the Constitution, they referred in the very same sentence to qualifications of *voters* (electors) as well as of members of Congress: "qualifications of electors and elected" in Madison's words;

"qualifications of the persons who may choose or be chosen" in Hamilton's. Yet there was never any doubt that Article I, § 2, cl. 1, left the qualifications of *voters* entirely up to the legislature of each State (as long as they matched what the State set for voters for its lower house). Such qualifications were "fixed" by the Constitution only in the sense that *Congress* could not change them. Thus, "fixed" as used by Madison and Hamilton could not possibly have meant beyond the power of the state legislatures: otherwise the quoted statements, because they referred to voters as well as to representatives, would have made no sense.[62]

D. This Court's Prior Decisions Recognize Legislative Power To Add Disqualifications.

In *Powell* v. *McCormack*, 395 U.S. 486 (1969), this Court interpreted the meaning of the word "Qualifications" in Article I, § 5, which provides that "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members . . . ."[63] This Court held that when a single House of the Congress was thus sitting in a quasi-judicial role pursuant to Article I, § 5, to "Judge" the qualifications of its members, then the only "Qualifications" that § 5 authorized it to apply were those specified in the Constitution, and not others that it might wish to add for the occasion. *Cf.* also *INS* v. *Chadha*, 462 U.S. 919 (1983) (single House may not exercise the lawmaking power of Congress).

Powell considered the authority of one House to exclude a person elected by the people of a State; not whether Article I excludes additional restrictions on being elected. This Court in *Powell* did not hold that the disqualifications in Article I, §§ 2 and 3, could not be added to by legislation, by the States or even by Congress. On

[62] The same use of "fixed" occurs in Wilson Nicholas' explanation in the Virginia ratifying convention. 3 ELLIOT 8.

[63] "We held that, in light of the three requirements specified in the Constitution, the word 'qualifications'—of which the House was to be the Judge—was of a precise, limited nature." *Nixon* v. *United States*, 113 S. Ct. 732, 740 (1993).

the contrary, the opinion noted that although "petitioners argue that the proceedings [of the Constitutional Convention] manifest the Framers' unequivocal intention to deny *either branch of Congress* the authority to add to or otherwise vary the membership qualifications expressly set forth in the Constitution," nevertheless

> "We do not completely agree, for the debates are subject to other interpretations."

395 U.S. at 532 (emphasis supplied).[64] And, far from addressing the power of the States to regulate the qualifications for Congress, the *Powell* opinion specifically put that issue aside: it pointed out that it was not deciding "the more narrow issue of the power of the States." 395 U.S. at 543.

That *Powell* did not reach beyond Art. I, § 5, was subsequently confirmed in *Buckley* v. *Valeo*, 424 U.S. 1 (1976). There this Court reiterated that Article I, "Section 5 confers . . . not a general legislative power upon the Congress, but rather a power 'judicial in character' upon each House of the Congress." 424 U.S. at 133. Far from suggesting that the minimum qualifications in the Constitution were exclusive, this Court in *Buckley* observed that under Article I, § 4, even *Congress* might add to them:

> "Whatever *power Congress may have to legislate*, such qualifications must derive from § 4, rather than § 5, of Art. I."

Id. (emphasis supplied). When Congress legislates a disqualification, of course, it interferes with the right of the people of the States under Article I and the Seventeenth Amendment to choose their own representatives. A

[64] This Court went on to hold that the argument was acceptable only "in the context . . . of the distinction the Framers made between the power to expel and the power to exclude," *i.e.*, only as a construction of Article I, § 5. 395 U.S. at 532. The opinion emphasized that if each House's power to exclude, exercised by majority vote, were not limited by this fixed standard, it would effectively supplant the limitation on the power to expel, Art. I, § 5, cl. 2, which requires a two-thirds vote. 395 U.S. at 536.

disqualification enacted by the people of the State themselves, however, does not—and can be overridden by Congress under Article I, § 4.[65]

E. Other Sources Are Inconclusive.

1. *House and Senate Seating Votes.*

Occasionally members of the House and Senate in judging election contests under Article I, § 5, debated whether to honor state qualification laws. This Court in *Powell* v. *McCormack* held that "we are not inclined to give [Congress'] precedents controlling weight." 395 U.S. at 547. The constitutional position taken by members, which sometimes changed, sometimes corresponded to their immediate political interests. See Z. CHAFEE, FREE SPEECH IN THE UNITED STATES 261 (1941). This Court observed that "congressional practice has been erratic" and cautioned that even "[h]ad these congressional exclusion precedents been more consistent, their precedential value still would be quite limited." 395 U.S. at 545-46 (footnote omitted).[66]

2. *Old Cases.*

Some old cases from other courts have commented, often in dicta, that the disqualifications in Article I pre-

[65] In drafting the first clause of Article I, § 2, the originally proposed word "elected" was eliminated, in favor of the broader term "chosen . . . by the People." See 2 FARRAND 129, 178. The Seventeenth Amendment was not intended to narrow this scope. *Cf. Newberry* v. *United States*, 256 U.S. 232, 250 (1921). Here it was "the People" of the State who exercised their constitutionally assigned choice when they adopted Amendment 73. They could also repeal it at any time. Ark. Const., amend. 7.

[66] In one early dispute, cited by the Arkansas plurality, P.C.A. 13a, a House committee recommended not to honor Maryland's added requirement of district residency. However, the full House rejected the committee's report and declined to decide that the Maryland law was unconstitutional. See M. CLARKE & D. HALL, CASES OF CONTESTED ELECTIONS IN CONGRESS 167, 169-71 (1834). Representative Randolph argued that "the Constitution merely enumerated a few *disqualifications* within which the States were left to set." 17 ANNALS OF CONG. 883 (1807) (emphasis in original).

cluded the States from adding others. Several of these opinions, invalidating state prohibitions on officials running for Congress, were effectively disapproved by this Court's decision in *Clements* v. *Fashing, supra*.[67] Others simply provided no reasoning or simply cited Justice Joseph Story's treatise or, in more recent years, misread *Powell's* Article I, § 5, holding as a bar to state laws.[68] None considered the actual state and congressional practice going back to 1788 and 1789. There were also decisions holding state qualification laws valid.[69]

3. *Commentators.*

1. The first prominent writer on the Constitution expressed the view that the States had ample power to enact requirements such as property ownership and district residency. Judge St. George Tucker noted Virginia's requirement of freehold ownership and district residency as "a wise provision and perfectly consonant with the principles of representation." 1 ST. G. TUCKER, BLACKSTONE'S COMMENTARIES App. 197 (1803). He worried, however, that the law might be ineffective if the voters of a district chose to ignore those qualifications, and then the House under Article I, § 5, decided to ignore the state law and seat the winner.[70]

[67] *E.g., State ex rel. Wettengel* v. *Zimmerman*, 249 Wis. 237, 24 N.W.2d 504 (1946). After *Clements* an Article I attack on such a law was rejected in *Joyner* v. *Mofford, supra*.

[68] *E.g., Danielson* v. *Fitzsimmons, supra*; *Stack* v. *Adams*, 315 F. Supp. 1295 (N.D. Fla. 1970).

[69] *E.g., Adams* v. *Supreme Court*, 502 F. Supp. 1282, 1291 (M.D. Pa. 1980); *Williams* v. *Tucker*, 382 F. Supp. 381, 388 (M.D. Pa. 1974) (three-judge court); *Oklahoma State Election Bd.* v. *Coats*, 610 P.2d 776, 780 (Okla. 1980); see also n. 40, *supra*.

[70] See 1 ST. G. TUCKER, *supra*, at App. 213. They "may be rendered nugatory, by the constitution which imposes no such condition, and which makes each house the judge of the qualifications, as well as of the elections and returns of its own members," "should any man possess a sufficient interest in a district in which he neither resides nor is a freeholder, to obtain a majority of the suffrages in his favor." 1 *id.* at App. 197, 213. The apprehension was not unfounded, even for the disqualifications of Article I, § 3. See 16 ANNALS OF CONG. 24 (1806) (Senate seating of Henry Clay

2. In the same era Thomas Jefferson reflected that, although it remained one of the "doubtful questions on which honest man may differ,"

> "Had the constitution been silent, nobody can doubt but that the right to prescribe all the qualifications and disqualifications of those they would send to represent them, would have belonged to the State. So also the constitution might have prescribed the whole, and excluded all others. It seems to have preferred the middle way. It has exercised the power in part, by declaring some disqualifications, to wit, those of not being twenty-five years of age, of not having been a citizen seven years, and of not being an inhabitant of the State at the time of election. But it does not declare, itself, that the member shall not be a lunatic, a pauper, a convict of treason, of murder, of felony, or other infamous crime, or a non-resident of his district; nor does it prohibit to the State the power of declaring these, or any other disqualifications which its particular circumstances may call for; and these may be different in different States. Of course, then, by the tenth amendment, the power is reserved to the State." [71]

3. Justice Joseph Story in 1833 argued in his treatise, exactly contrary to Jefferson, that "the affirmation of these qualifications would seem to imply a negative of all others." 2 J. STORY, COMMENTARIES § 624 (1833). He acknowledged the state laws that required district residency or property ownership, but argued that if these were allowed "they may impose any other qualifications . . . however inconvenient, restrictive, or even mischievous," hypothesizing in particular state religious tests for office. 2 *id.* at § 623.[72] He did not mention the override

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when 29 years old). The House ignored state laws on other occasions. See *Powell* v. *McCormack*, *supra*, 395 U.S. at 543 n.79.

[71] Letter to Joseph C. Cabell, Jan. 31, 1814, in 11 WORKS OF THOMAS JEFFERSON 380 (P. Ford ed. 1905).

[72] Justice Story further argued that the States could not add qualifications for a Representative because he said they could not do

power of Congress in Article I, § 4, nor the specific prohibition of religious tests in Article VI. He also warned that a State might set qualifications so high that no one could meet them, thereby dissolving the Union. *Id.*[73]

4. For years most commentators paid little attention to the issue, simply relying on Story's argument.[74] More recently, however, Professor Zechariah Chafee rejected Story's theory of exclusivity as one of two "extreme views" that did not reflect the fact that "Congress has rather cautiously imposed some additional tests by statute," and "[m]ost of the exclusions from Congress before 1919 were for offenses which had been expressly made a disqualification by Act of Congress." [75]

* * *

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so for the President, and "[e]ach is an officer of the Union." 2 J. STORY, *supra*, at § 626. That the people of a single State might not erect qualifications for an office representing people of all the States, however, says nothing about their setting qualifications for officers who represent their own State in Congress. Moreover, although the Constitution again is silent, States added qualifications for their Presidential electors. See pp. 37-38, *supra*.

[73] Although influential, Justice Story was hardly infallible, and sometimes he was famously wrong. In *Swift* v. *Tyson*, 16 Pet. 1 (1842), he assured "we have not now the slightest difficulty in holding" what was the "true intendment and construction" of the first Judiciary Act. 16 Pet. at 19. His conclusion prevailed for nearly a century, until *Erie R.R.* v. *Tompkins*, 304 U.S. 64 (1938). Justice Holmes, joined by Justices Brandeis and Stone, had earlier concluded that "Mr. Justice Story probably was wrong if anyone is interested to inquire what the framers of the instrument meant," and "in my opinion the prevailing doctrine has been accepted upon a subtle fallacy that never has been analyzed." *Black & White Taxicab & Transfer Co. Brown & Yellow Taxicab & Transfer Co.*, 276 U.S. 518, 532-33, 535 (1928) (dissenting opinion). See also *Mayor of New York* v. *Miln*, 11 Pet. 102, 158 (1837) (Story, J., dissenting, urging that grant of commerce power to Congress "leaves no residuum" for the States).

[74] *Compare* 1 J. KENT, COMMENTARIES ON AMERICAN LAW 214 (1826) (simply citing Article I disqualifications) *with* 1 *id.* 228 n.a (3d ed. 1836) (adding footnote adopting Story view).

[75] Z. CHAFEE, *supra*, at 257, 262-63 (footnote omitted). Chafee observed that "causes of exclusion must be established by law,

Whether the voters of Arkansas were wise in enacting their ballot limitation, no one at this point can say with certainty. Petitioners believe that they were; some other serious Americans believe that laws discouraging long incumbency in Congress are a bad idea. Congress may superimpose its own judgment on the matter at any time.

What is certain is that if this Court reads an unstated prohibition of this law into Article I, the opportunity for experiment will end—along with who can say how many other state regulations of congressional elections.

> "Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory . . . . This Court has the power to prevent an experiment. . . . But in the exercise of this high power, we must be ever on our guard, lest we erect our prejudices into legal principles."

New State Ice Co. v. *Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). "Our view of the wisdom of a state constitutional provision may not color our task of constitutional adjudication." *Clements* v. *Fashing*, *supra*, 457 U.S. at 973. And Justice Holmes cautioned against

> "prevent[ing] the making of social experiments that an important part of the community desires, in the insulated chambers afforded by the several States, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect."

Truax v. *Corrigan*, 257 U.S. 312, 344 (1921) (dissenting opinion).

CONCLUSION

For the reasons stated, the judgment should be reversed.

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and that the resolution of one house of Congress cannot make law." *Id.* at 262 (footnote omitted). *Cf. INS* v. *Chadha, supra; Powell* v. *McCormack, supra.*

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APPENDICES

APPENDIX A

CONSTITUTION OF ARKANSAS

AMENDMENT NO. 73

(Adopted Nov. 3, 1992)

PREAMBLE:

The people of Arkansas find and declare that elected officials who remain in office too long become preoccupied with reelection and ignore their duties as representatives of the people. Entrenched incumbency has reduced voter participation and has led to an electoral system that is less free, less competitive, and less representative than the system established by the Founding Fathers. Therefore, the people of Arkansas, exercising their reserved powers, herein limit the terms of elected officials.

SECTION 1—Executive Branch

(a) The Executive Department of this State shall consist of a Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, all of whom shall keep their offices at the seat of government, and hold their offices for the term of four years, and until their successors are elected and qualified.

(b) No elected officials of the Executive Department of this State may serve in the same office more than two such four year terms.

SECTION 2—Legislative Branch

(a) The Arkansas House of Representatives shall consist of members to be chosen every second year by the qualified electors of the several counties. No member of the Arkansas House of Representatives may serve more than three such two years terms.

(b) The Arkansas Senate shall consist of members to be chosen every four years by the qualified electors of the several districts. No member of the Arkansas Senate may serve more than two such four year terms.

SECTION 3—Congressional Delegation

(a) Any person having been elected to three or more terms as a member of the United States House of Representatives from Arkansas shall not be certified as a candidate and shall not be eligible to have his/her name placed on the ballot for election to the United States House of Representatives from Arkansas.

(b) Any person having been elected to two or more terms as a member of the United States Senate from Arkansas shall not be certified as a candidate and shall not be eligible to have his/her name placed on the ballot for election to the United States Senate from Arkansas.

SECTION 4—Severability.

The provisions of this Amendment are severable, and if any should be held invalid, the remainder shall stand.

SECTION 5—Provisions Self-Executing

Provisions of this Amendment shall be self-executing.

SECTION 6—Application

(a) This Amendment to the Arkansas Constitution shall take effect and be in operation on January 1, 1993, and its provisions shall be applicable to all persons thereafter seeking election to the offices specified in this Amendment.

(b) All laws and constitutional provisions which conflict with this Amendment are hereby repealed to the extent that they conflict with this amendment.

APPENDIX B

CONSTITUTIONAL PROVISIONS

The Constitution of the United States provides in part:

* * * *

ARTICLE I

* * * *

SECTION 2. The House of Representatives shall be composed of Members chosen every second year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

* * * *

SECTION 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

* * * *

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

* * * *

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law.

SECTION 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

* * * *

SECTION 5. Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members . . . .

* * * *

SECTION 6.

* * * *

. . . [N]o person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

* * * *

SECTION 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War,

unless actually invaded, or in such imminent Danger as will not admit of delay.

* * * *

ARTICLE II

SECTION 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice-President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Sentator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

* * *

ARTICLE IV

* * * *

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

* * * *

ARTICLE VI

* * * *

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

* * * *

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

* * * *

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

* * * *

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * *

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

* * * *

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

* * *

AMENDMENT XVII

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures. . . .

* * *

AMENDMENT XIX

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

* * *

AMENDMENT XXII

SECTION 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. . . .

APPENDIX C

EARLY STATE LAWS—CONGRESS

Connecticut

Connecticut Resolution of October 9, 1788, provided:

> Whereas the United States in Congress Assembled on the thirteenth Day of September last Resolved that the first Wednesday of March next be the Time, and the present Seat of Congress the Place for commencing Proceedings under the Constitution for the United States lately adopted, by which it has become necessary that the People of this State, elect Representatives, to attend said Congress, pursuant to the second Section of the first Article of said Constitution.
>
> Resolved by this Assembly that to effect an Election of Representatives of the People of this State to attend the Congress of the United States on said first Wednesday of March next, the Constables of the several Towns in this State, shall warn the Freemen of their respective Towns to meet at the usual places of holding Freemens Meetings at ten oClock in the Morning of Monday the tenth Day of November next, which warning shall be given by fixing upon the public Sign Post in each Society of the several Towns a written notification signed by one or more of the Constables specifying the Time Place and Business of said Meeting at least eight Days before the Time of holding the same;
>
> And the Freemen thus convened shall each give his Votes or Suffrages for a number not exceeding twelve Persons whom he Judges Qualified to stand in nomination for Representatives of the People of this State to the Congress of the United States; for which no Person is eligible unless he has arrived to the Age of twenty five Years has been an Inhabitant

> of the United States seven Years, and at the Time of Election is an Inhabitant of this State.
>
> * * *
>
> . . . And the twelve Persons who have the greatest number of Votes, shall stand in the nomination for Representatives of the People in Congress; which Persons so nominated said Committee shall Certify accordingly, and shall procure a sufficient number of such Nominations with their Certificate on each to be printed and shall lodge one with the Secretary of this State for Record.
>
> And said Committee shall forthwith transmit as many of said Printed Nominations as there are Towns in this State to the Sheriffs in the several Counties directed in Writing to an Assistant Justice of the Peace or Constable of each Town; which Nominations the Sheriffs in their respective Counties shall leave with the Persons to whom directed, or at their usual Places of Abode, before or in the thirteenth Day of Decemb [*sic*] next,
>
> And the Constables of every Town shall warn a Meeting of the Freemen of such Town respectively in the same manner in every respect that is specified in this Act for warning Meetings to Vote for Nomination, to meet at ten oClock in the morning of Monday the twenty second Day of December next, when and where each Freeman shall give his Vote or Suffrage for a number not exceeding five Persons whose Names are Contained in said Nomination, to be Representatives of the People of this State in the Congress of the United States . . . . And the Assistant Justice or Constable receiving said Votes shall conduct with them in the same manner as is directed in this Act relative to the Votes for Nomination excepting that the Certificates of these Votes shall be sent by one of the Deputies to the General Assembly to be holden at the City of New Haven by Adjourn-

ment on the first Day of January next; which Assembly shall receive Sort and Count said Votes in such manner as they shall Judge proper, and declare the five Persons in said Nomination who have the greatest number of Votes to be Representatives for the People of this State to attend the Congress of the United States, for two Years pursuant to said Constitution . . . .

Connecticut Act of Jan. 1, 1789, provided:

An Act for regulating the Election of Senators and Representatives, for this State, in the Congress of the United States.

Be it enacted by the Governor, Council, and Representatives, in General Court assembled, and by the Authority of the same . . .

And be it further enacted by the Authority aforesaid, That the Freemen of the several Towns in this State, at the Freemen's Meeting in April, in the Year of our Lord 1790, and once in two Years thereafter, at the Freemen's Meeting in April, immediately after giving in their Votes for the Officers of Government, shall each give in his Vote or Suffrage for twelve Persons, such as he judges qualified, to stand in Nomination, for Election in the Month of October, then next following, as Representatives of the People of this State, in the Congress of the United States, their Names being fairly written on a Piece of Paper, to the Person who by Law presides in said Meeting; who shall in the Presence of the Freemen, make Entry of all such Persons as the Freemen shall vote for, and the Number of Votes for each; and lodge the same in the Town Clerk's Office, of the Town to which he belongs, and transmit a Copy under his Hand and Office, sealed up, to the General Assembly in May, then next following, by one of the Representatives of such Town; at which Assembly, the Votes of the Freemen shall be counted: And

the twelve Persons who have the greatest Number of Votes, shall be the Persons whose Names shall be returned to the several Towns, to stand in the Nomination aforesaid.

And the Freemen to the several Towns in this State, at the Freemen's Meeting in September, then next following, immediately after the Votes of the Freemen, for Persons to stand in Nomination as Assistants, are given in shall each of them give in his Vote, for a Number of Persons contained in said Nomination, for Representatives in Congress, not exceeding Five, to the same Person presiding, and in the same Manner; and the Person authorized to receive said Votes, shall proceed with, transmit, and deliver said Votes, to such Persons as are appointed to receive them, at the General Assembly, in October the next following, in the same Manner as by Law is prescribed, relative to the Election of Assistants in April annually; which Assembly shall count the said Votes of the Freemen, and the five Persons who shall have the greatest Number of Votes, shall be declared to be chosen Representatives of the People of this State, in the Congress of the United States.

And no Person shall be Representative as aforesaid, who shall not have arrived to the Age of Twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of this State. . . .

Delaware

Delaware Act of Oct. 28, 1788, provided:

In the Thirteenth Year of the Independence of the Delaware State, An Act directing the time, Places, and Manner of holding an Election for a Representative of this State in the Congress of the United States, and for appointing Electors, on the part of this State,

for Choosing a President and Vice President of the United States,

* * *

AND BE IT ENACTED, that every person coming to vote for a Representative and Electors, agreeably to the said constitution and the Directions of this Act, shall deliver in writing on one ticket or piece of paper, the names of two persons, one of whom at least shall not be an inhabitant of the same county with themselves, to be voted for as Representative, and one other person to be voted for as one of the Electors, for the purposes in the said Constitution mentioned which said Elector shall be an inhabitant of the same county in which he shall be voted for. . . .

. . . [A]nd the said President or Commander in chief shall thereupon declare, by proclamation the name of the person highest in vote, and therefore duly elected as Representative of and for this State in the Congress of the United States, and also the names of the three Persons who shall be highest in vote among those voted for as Electors, and therefore duly elected Electors agreeably to the constitution aforesaid; . . .

Massachusetts

Massachusetts Resolve of Nov. 19, 1788, ch. 49, provided:

Resolve for organizing the Federal Government.
November 19, 1788.

Resolved, That the Commonwealth be divided into eight districts, for the purpose of choosing eight persons to represent the people thereof, in the Congress of the United States, each district to choose one Representative, who shall be an inhabitant of such district, and that the districts be as follows, viz. . . .

Virginia

Virginia Act of Nov. 20, 1788, ch. II, provided:

An ACT for the Election of REPRESENTATIVES pursuant to the Constitution of Government of the United States.

[*Passed the 20th of* NOVEMBER, 1788.]

SECTION I. . . . WHEREAS, it is provided by the said Constitution, that until the enumeration therein directed shall be taken, *Virginia* shall be entitled to ten Members in the House of Representatives, and that the times, places, and manner of holding elections for the same, shall be prescribed by the Legislature: *BE it therefore enacted by the General Assembly*, . . .

SECT II. THAT the persons qualified by law to vote for members to the House of Delegates, in each county composing a district, shall assemble at their respective county court-houses on the second day in *February* next, and then and there vote for some discreet and proper person, being a freeholder, and who shall have been *a bona fide* resident for twelve months within such district, as a member to the House of Representatives for the United States. . . .

Virginia Act of December 26, 1792, ch. 1, provided:

An ACT *for arranging the Counties of this Commonwealth into Districts to choose Representatives to Congress. . . .*

SEC. II. *AND be it further enacted*, That the persons qualified by law to vote for members to the House of Delegates in each county and corporation composing a district, shall assemble at their respective county courthouses, on the third Monday in March next, and also on the third Monday in March in every second year thereafter, and then and there vote for some discreet and proper person, being a freeholder and resident within such district, as a member of the House of Representatives for the United States.

New Jersey

New Jersey Act of November 21, 1788, ch. 241, provided:

An ACT for carrying into Effect, on the Part of the State of New Jersey, the Constitution of the United States, assented to, ratified and confirmed by this State, on the eighteenth Day of December, in the Year of our LORD One Thousand Seven Hundred and Eighty-seven.

WHEREAS, the good People of this State, on the said eighteenth Day of December, in and by a Convention of Delegates chosen by the Citizens thereof, agreeably to an Act of the Legislature for that Purpose made and provided, did, on the Part of this State assent to, ratify and confirm, a Constitution for the United States, agreed to and recommended, in the Name of the People of the United States, by the unanimous Consent of the said United States in Convention assembled at Philadelphia on the seventeenth Day of September, in the said Year of our LORD One Thousand Seven Hundred and Eighty-seven: AND WHEREAS, in and by the said Constitution, it is, among other Things,: provided and directed, . . .

That the Times, Places and Manner, of holding Elections for Senator, and Representatives shall be prescribed in each State by the Legislature thereof . . .

Sect. I. BE IT ENACTED *by the Council and General Assembly of this State, and it is hereby Enacted by the Authority of the same*, That it shall and may be lawful for every Inhabitant of this State, who is or shall be qualified to vote for Members of the State Legislature, to nominate four Candidates to the Choice of the People, as Representatives in the said Congress of the United States, by writing on one Ticket or Piece of Paper the Names of four Persons to be voted for as Representatives, which said Ticket or Piece of Paper shall be subscribed by the Person nominating with the Date of doing the same, and that at any Time at least thirty Days previous to the Day

of Election of said Representatives, delivering the said Ticket or Piece of Paper so subscribed and dated to the Clerk of the Court of Common Pleas of the County in which such Inhabitant may reside, which Clerk is hereby directed and required to receive and carefully to file the same, provided it be delivered within the Time aforesaid.

2. *And be it Enacted by the Authority aforesaid*, That each and every Clerk of the Court of Common Pleas in the respective Counties of this State is, and hereby are directed and required, at the Expence of the State, twenty-four Days previous to the Day of Election of the said Representatives, to transmit, by a careful and trusty Person, a true Copy of all and every such Nomination as shall be delivered to him as aforesaid to the Governor of this State for the Time being, who is hereby directed and required, at least eighteen Days previous to the said Day of Election for Representatives, to cause the same to be published in the News-Papers printed in this State, and in two or more printed in the cities of New-York and Philadelphia; and also to transmit a true List of the Names of every Candidate so returned to him as aforesaid to each and every Sheriff of the respective Counties in this State, who is hereby required immediately to put up, in at least five of the most publick Places in his County, a true List of the Names of the said Candidates.

3. *And be it further Enacted by the Authority aforesaid*, That the Persons so nominated, and whose Names shall be transmitted to the several Sheriffs as aforesaid, shall exclusively be the Candidates from whom four Representatives shall be voted for in each of the Counties of this State; and that no Person whatever shall be set up as a Candidate on the said Day of Election, but the Persons so nominated and returned as aforesaid. . . .

Maryland

Maryland Act of Dec. 22, 1788, ch. 10, provided:

An ACT directing the time, places and manner, of holding elections for representatives of this state in the congress of the United States, and for appointing electors on the part of this state for choosing a president and vice-president of the United States, and for the regulation of the said elections. . . .

II. BE IT ENACTED, *by the General Assembly of Maryland*, That for the purpose of choosing representatives in the congress of the United States, this state be divided into six districts, which shall be numbered from one to six; that Saint-Mary's, Charles, and Calvert counties, compose the first district; Kent, Talbot, Cecil and Queen-Anne's, the second; Anne-Arundel, including the city of Annapolis, and Prince-George's, the third; Baltimore, including the town of Baltimore, and Harford, the fourth; Somerset, Dorchester, Worcester and Caroline, the fifth; and Frederick, Washington and Montgomery, the sixth district. . . .

VII. AND BE IT ENACTED, That every person coming to vote for representatives for this state in the congress of the United States, shall have a right to vote for six persons, one whereof shall be a resident of each of the said districts, and the candidate in each district having the greatest number of votes of all the candidates residing in that district, shall be declared to be duly elected for that district. . . .

XIII. AND BE IT ENACTED, That if a vacancy or vacancies shall happen in the representation of this state in the house of representatives in the congress of the United States, by death, resignation, disqualification, or otherwise, the governor and council shall issue writs of election to the several counties in this state, the city of Annapolis and Baltimore-town, to fill such vacancy or vacancies by an election of a representative or representatives residing in the district or districts where such vacancy or vacancies shall happen, in the manner herein before prescribed. . . .

Georgia

Georgia Act of Jan. 23, 1789, p. 247, provided:

An Act For appointing the times, manner and places for holding elections for representatives in Congress.

In order on the part of this State to carry into effect the Constitution of the United States of America. Be it enacted by the freemen of the State of Georgia in general Assembly met and it is hereby enacted by the authority of the same that the elections in this State for members of the House of Representatives in Congress of the United States shall be held in the manner following, that is to say, this State shall be and is hereby declared to be divided into three districts . . . . [T]he manner of electing three members for Representatives of the State shall be, that every man shall ballot three persons, one subj. of which shall be a resident of three years standing in the district such constituent resides in; and the other two persons to be ballotted for by such voter shall be residents of like standing of the other two separate districts: that is to say, there shall be one candidate balloted for by every voter who is an inhabitant of each separate district so that each district in the State may be properly, impartially and effectually represented. . . .

North Carolina

North Carolina Act of Dec. 16, 1789, ch. 1, provided:

An Act directing the Manner of electing Representatives to represent this State in Congress.

I. BE *it enacted by the General Assembly of the State of North-Carolina, and it is hereby enacted by the authority of the same*, That until an actual census be made, this state shall be divided and laid off into five divisions: . . . each of which divisions shall be entitled to elect and send one Representative to the Legislature of the United States; and the person elected in each division shall be a

resident or inhabitant of the division for which he is elected, during the space or term of one year before, and at the time of election. . . .

Tennessee

Tennessee Act of Aug. 3, 1796, ch. 1, provided:

An ACT *directing the mode of electing one representative to represent this State in the Congress of the United States. . . .*

Sec. 2. *Be it enacted*, That the person elected shall have been a citizen or resident of this state, three years next immediately preceding the day of election: *Provided*, That this shall not be construed to extend to any person who was a citizen or resident of this state at the time of making the constitution thereof.

APPENDIX D

EARLY STATE LAWS—PRESIDENTIAL ELECTORS

Pennsylvania

Pennsylvania Act of Oct. 4, 1788, provided:

An Act directing the time, places and manner of holding elections for Representatives of this State in the Congress of the United States and for appointing Electors on the part of this State for chusing a President and Vice-President of the United States.

* * *

And be it further enacted by the authority aforesaid That every person coming to elect Representatives shall deliver in writing on one ticket or piece of paper the names of Eight persons to be voted for as Representatives, And that every person coming to vote for Electors agreeably to the said Constitution and the directions of this Act shall deliver in writing on one ticket or piece of paper the names of ten persons to be voted for as Electors agreeably to the said Constitution and for the purposes therein mentioned the said Persons so voted for as Representatives and Electors to be selected from the Citizens and Inhabitants of the state at large who are duly qualified according to the said Constitution to serve in the said respective Stations which said tickets or Ballots shall be received and dealt with in like manner with those delivered in at the General Elections for Members of Assembly and Councillors of this State. . . .

And the said Supreme Executive Council after having received the returns papers and instruments aforesaid from the said City and each and every of the counties aforesaid shall enumerate and ascertain the numbers of Votes for each and every Candidate and person so as aforesaid chosen as representatives

or Electors respectively and shall thereupon declare by proclamation issued by the said Council duly signed by the President, and without delay dispersed thro' the State, the names of the Eight persons highest in Votes of the Electors throughout the State, and in consequence duly elected and chosen as Representatives of and for the State in the Congress of the United States, and the names of the ten persons highest in Votes and therefore elected as Electors agreeably to the Constitution aforesaid. . . .

Delaware

Delaware Act of Oct. 28, 1788, provided:

In the Thirteenth Year of the Independence of the Delaware State, An Act directing the time, Places, and Manner of holding an Election for a Representative of this State in the Congress of the United States, and for appointing Electors, on the part of this State, for Choosing a President and Vice President of the United States,

And be it enacted, that every person coming to vote for a Representative and Electors, agreeably to the said constitution and the Directions of this Act, shall deliver in writing on one ticket or piece of paper, the names of two persons, one of whom at least shall not be an Inhabitant of the same County with themselves, to be voted for a Representative, and one other person to be voted for as one of the Electors, for the purposes in the said Constitution mentioned which said Elector shall be an Inhabitant of the same County in which he shall be voted for. . . .

. . . [A]nd the said President or Commander in chief shall thereupon declare by Proclamation the name of the Person highest in vote, and therefore duly elected as Representative of and for the State in the Congress of the United States, and also the names of the three Persons who shall be highest in vote among

those voted for as Electors, and therefore duly elected Electors agreeably to the Constitution aforesaid. . . .

New Hampshire

New Hampshire Act of Nov. 12, 1788, provided:

An Act for carrying into effect an Ordinance of Congress of the 13th Sept. last—relative to the Constitution of the United States

Be it enacted by the Senate and House of Representatives in General Court convened . . . .

And be it further enacted by the Authority aforesaid that the Inhabitants of the several towns & parishes plantations And places unincorporated qualified as aforesaid shall on the third monday of December next in town meeting assembled give in their votes for five persons Inhabitants of this State who shall not be Continental Senators Representatives or persons holding offices of profit or trust under the united States to be the electors for this State . . . .

Virginia

Virginia Act of Nov. 17, 1788, provided:

An ACT for the appointment of Electors to chuse a President pursuant to the Constitution of Government of the United States.

Passed the 17th of November 1788.

Whereas the United States in Congress assembled did on the thirteenth day of September in the year of our Lord one thousand seven hundred and eighty eight resolve that the first Wednesday in January next be the day for appointing Electors in the several States which before the said day shall have ratified the New Constitution of Government for the United States that the first Wednesday in February next be the day for the Electors to assemble in their respec-

tive States and vote for a President and that the first Wednesday in March next be the time and the present Seat of Congress the place for commencing proceedings under the said Constitution Be it therefore enacted by the General Assembly that for the purpose of chusing twelve Electors on behalf of this State to vote for a President in conformity to the Constitution of Government for the United States the several Counties in this Commonwealth shall be alloted into twelve Districts in manner following . . . . That the persons qualified by law to vote for Members to the General Assembly in each County composing a District shall assemble at their respective Courthouses on the first Wednesday in January and then and there vote for some discreet and proper person being a freeholder and bona fide resident in such District for twelve months as an Elector for such District to vote for a President of the United States in conformity to the said Constitution . . . .

Massachusetts

Massachusetts Resolve of Nov. 19, 1788, provided:

Resolved for organizing the Federal Government
November 19, 1788

Resolved, ...

And be it further Resolved,

That when the inhabitants of the several Towns & Districts qualified as aforesaid shall be assembled on the said eighteenth day of December next, they shall also give in their votes for two persons who shall be inhabitants of the district in which such Town or District may be, as Candidates for an Elector of the President and Vice President of the United States—And a list of the votes so given in as aforesaid, Shall, by the Selectmen of the several Towns & Districts, or the major part of them be transmitted to the Secretary's office on or before the first monday

in January next—and on the Wednesday next following, the General Court then in session shall examine the said Returns, and from the two who shall be found to have the greatest number of votes in each district, the members of the two houses assembled in one room shall be joint ballot elect one who shall be the Elector for the district to which he belongs—and in case it should so happen, that more than two persons voted for as Electors should have an equality of votes among the highest voted for, then the members of the two houses as aforesaid shall out of such number choose the Elector . . . .

And be it further Resolved

That the members of the two houses of the General Court shall in manner as aforesaid appoint at large, two Electors for the President and Vice President, not voted for by the districts as aforesaid—
. . . .

New Jersey

New Jersey Act of Nov. 21, 1788, provided:

An ACT for carrying into Effect, on the Part of the State of New Jersey, the Constitution of the United States, assented to, ratified and confirmed by this State, on the eighteenth Day of December, in the Year of our LORD One Thousand Seven Hundred and Eighty-seven. . . . .

8. *And be it further Enacted by the Authority aforesaid*, That, until further Provision shall be made by Law for the nominating and appointing the Electors to be chosen by this State for the Purpose of voting for two Persons as is mentioned in the first Section of the second Article of said Constitution, it shall and may be lawful for the Governor and Council of this State to meet on the first Wednesday in January next at Princeton, unless the Legislature of the State shall be sitting elsewhere, and then at such

Place, and then and there, by Plurality of Votes, to nominate, elect and appoint, six Citizens of this State, being Freeholders and Residents in the State, and otherwise qualified to be the Electors for the Purposes mentioned in the said Constitution, whom the Governor for the Time being shall commission under the Great Seal of the State, and make known the same by Proclamation; . . . .

Maryland

Maryland Act of Dec. 22, 1788, provided:

An ACT directing the time, place and manner, of holding elections for representatives of this state in the congress of the United States, and for appointing electors on the part of this state for choosing a president and vice-president of the United States, and for the regulation of the said elections. . . .

VI. *And be it enacted.* That every person coming to vote for electors of president and vice-president, agreeably to the directions of this act, shall have a right to vote for eight persons, five of whom shall be residents of the western shore, and three of the eastern shore, and the five persons residents of the western shore, having the greater number of votes of all the candidates on that shore, and the three persons residents of the eastern shore, having the greatest number of votes of all the candidates on that shore, shall be declared to be duly elected. . . .

APPENDIX E

FEDERAL DISQUALIFICATION LAWS

1. Current Disqualification Laws

(Emphasis in all instances supplied)

1. Title 18 U.S.C. § 201 provides:

Bribery of public officials and witnesses

. . .

(b) Whoever— . . .

(4) directly or indirectly, corrupty demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for being influenced in testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom;

shall be fined not more than three times the monetary equivalent of the thing of value, or imprisoned for not more than fifteen years, or both, and *may be disqualified from holding any office of honor, trust, or profit under the United States.* . . .

2. Title 18 U.S.C. § 592 provides:

Troops at polls

Whoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States, *shall* be fined not more than $5,000 or imprisoned not more than five years, or both; and *be disqualified from holding any office of honor, profit, or trust under the United States* . . .

3. Title 18 U.S.C. § 593 provides:

Interference by armed forces

Whoever, being an officer or member of the Armed Forces of the United States, prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State; or

Whoever, being such officer or member, prevents or attempts to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election; or

Whoever, being such officer or member, orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote; or

Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

Whoever, being such officer or member, interferes in any manner with an election officer's discharge of his duties—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both; and *disqualified from holding any office of honor, profit or trust under the United States.* . . .

4. Title 18 U.S.C. § 1901 provides:

Collecting or disbursing officer trading in public property

Whoever, being an officer of the United States concerned in the collection or the disbursement of the revenues thereof, carries on any trade or business in the funds or debts of the United States, or of any

State, or in any public property of either, shall be fined not more than $3,000 or imprisoned not more than one year, or both; and *shall* be removed from office, and *be incapable of holding any office under the United States.*

5. Title 18 U.S.C. § 2071 provides:

Concealment, removal, or mutilation generally

. . . (b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined not more than $2,000 or imprisoned not more than three years, or both; and *shall* forfeit his office and *be disqualified from holding any office under the United States.* As used in this subsection, the term "office" does not include the office held by any person as a retired officer of the Armed Forces of the United States.

6. Title 18 U.S.C. § 2381 provides:

Treason

Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States, or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined not less than $10,000; *and shall be incapable of holding any office under the United States.*

7. Title 18 U.S.C. § 2383 provides:

Rebellion or insurrection

Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and *shall be incapable of holding any office under the United States.*

8. Title 5 U.S.C. § 7311 provides:

Loyalty and striking

An individual *may not accept or hold a position in the Government of the United States* or the government of the District of Columbia if he—

(1) advocates the overthrow of our constitutional form of government;

(2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government;

(3) participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or

(4) is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia.

9. Title 5 U.S.C. § 7313 provides:

Riots and civil disorders

(a) An individual convicted by any Federal, State, or local court of competent jurisdiction of—

(1) inciting a riot or civil disorder;

(2) organizing, promoting, encouraging, or participating in a riot or civil disorder;

(3) aiding or abetting any person in committing any offense specified in clause (1) or (2); or

(4) any offense determined by the head of the employing agency to have been committed in

furtherance of, or while participating in, a riot or civil disorder;

shall, if the offense for which he is convicted is a felony, *be ineligible to accept or hold any position in the Government of the United States* or in the government of the District of Columbia for the five years immediately following the date upon which his conviction becomes final. Any such individual holding a position in the Government of the United States or the government of the District of Columbia on the date his conviction becomes final shall be removed from such position.

(b) For the purposes of this section, "felony" means any offense for which imprisonment is authorized for a term exceeding one year.

10. Title 46 U.S.C. § 59 provides:

Penalty for neglect by officers

If any person authorized and required by this chapter to perform, as an officer, any act or thing, willfully neglects to do or perform the same according to the true intent and meaning of this chapter, he shall, if not subject to the penalty and disqualification prescribed in section 58 of this title, be punishable by a fine of $500 for the first offense, and by a like fine for the second offense, and *shall thenceforth be rendered incapable of holding any office of trust or profit under the United States.*

11. Title 46 U.S.C. § 322 provides:

Penalty for malfeasance

Every person, authorized and required by sections 251-255, 258, 259, 262-280, 293, 306-316, 318, 321-330, and 333-335 of this title to perform any act or thing as an officer, who willfully neglects or refuses to do and perform the same, according to the true intent and meaning of such sections, shall, if not

subject to the penalty and disqualifications prescribed in section 321 of this title, be liable to a penalty of $500 for the first offense, and of like sum for the second offense, and *shall*, after conviction for the second offense, *be rendered incapable of holding any office of trust or profit under the United States.*

2. Former Disqualification Laws

(Emphasis on substantive provisions supplied)

1. Act of Sept. 2, 1789, ch. 12, § 8, 1 Stat. 66, 67:

SEC. 8. *And be it further enacted,* That no person appointed to any office instituted by this act, shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce, or be owner in whole or in part of any sea-vessel, or purchase by himself, or another in trust for him, any public lands or other public property, or be concerned in the purchase or disposal of any public securities of any State, or of the United States, or take or apply to his own use, any emolument or gain for negotiating or transacting any business in the said department, other than what shall be allowed by law; and if any person shall offend against any of the prohibitions of this act, he shall be deemed guilty of a high misdemeanor, and forfeit to the United States the penalty of three thousand dollars, and *shall upon conviction* be removed from office, and *forever thereafter incapable of holding any office under the United States*: *Provided,* That if any other person than a public prosecutor shall give information of any such offence, upon which a prosecution and conviction shall be had, one half of the aforesaid penalty of three thousand dollars, when recovered, shall be for the use of the person giving such information.

2. Act of April 30, 1790, ch. 9, § 21, 1 Stat. 112, 117:

SEC. 21. *And be it* [*further*] *enacted,* That if any person shall, directly or indirectly, give any sum or

sums of money, or any other bribe, present or reward, or any promise, contract, obligation or security, for the payment or delivery of any money, present or reward, or any other thing to obtain or procure the opinion, judgment or decree of any judge or judges of the United States, in any suit, controversy, matter or cause depending before him or them, and shall be thereof convicted, such person or persons so giving, promising, contracting or securing to be given, paid or delivered, any sum or sums of money, present, reward or other bribe as aforesaid, and the judge or judges who shall in any wise accept or receive the same, on conviction thereof shall be fined and imprisoned at the discretion of the court; and *shall forever be disqualified to hold any office of honour, trust or profit under the United States.*

3. Act of May 8, 1792, ch. 37, § 12, 1 Stat. 280, 281:

SEC. 12. *And be it further enacted,* That the restriction on the clerks of the department of the treasury so far as respects the carrying on of any trade or business, other than in the funds or debts of the United States or of any state, or in any kind of public property, be abolished, and that such restriction, so far as respects the funds or debts of the United States, or of any state, or any public property of either, be extended to the commissioner of the revenue, to the several commissioners of loans, and to all persons employed in their respective offices, and to all officers of the United States concerned in the collection or disbursement of the revenues thereof, under the penalties prescribed in the eighth section of the act, intitled "An act to establish the treasury department" [Act of Sept. 2, 1789] and the provisions relative to the officers in the treasury department, contained in the "Act to establish the post-office and post roads," shall be and hereby are extended and applied to the commissioner of the revenue.

4. Act of Dec. 31, 1792, ch. 1, § 26, 1 Stat. 287, 298:

SEC. 26. *And be it further enacted*, That every collector, or officer, who shall knowingly make, or be concerned in making, any false register or record, or shall knowingly grant, or be concerned in granting, any false certificate of registry or record of, or for any ship or vessel, or other false document whatsoever, touching the same, contrary to the true intent and meaning of this act, or who shall designedly take any other, or greater fees, than are by this act allowed, or who shall receive any voluntary reward or gratuity, for any of the services performed, pursuant thereto; and every surveyor, or other person appointed to measure any ship or vessel, who shall wilfully deliver to any collector, or naval officer, a false description of such ship or vessel, to be registered or recorded, *shall*, upon conviction of any such neglect, or offence, forfeit the sum of one thousand dollars, and *be rendered incapable of serving in any office of trust or profit, under the United States*; and if any person or persons, authorized and required by this act, in respect to his or their office or offices, to perform any act or thing, required to be done or performed, pursuant to any of the provisions of this act, shall wilfully neglect to do or perform the same, according to the true intent and meaning of this act, such person or persons shall, on being duly convicted thereof, if not subject to the penalty and disqualification aforesaid, forfeit the sum of five hundred dollars for the first offence, and a like sum for the second offence, and *shall, thenceforth, be rendered incapable of holding any office of trust or profit under the United States.*

5. Act of Feb. 18, 1793, ch. 8, § 29, 1 Stat. 305, 315:

SEC. 29. *And be it further enacted*, That every collector, who shall knowingly make any record of enrolment or license of any ship or vessel, and every other officer, or person, appointed by, or under them,

who shall make any record, or grant any certificate, or other document whatever, contrary to the true intent and meaning of this act, or shall take any other, or greater fees, than are by this act allowed, or shall receive, for any service performed pursuant to this act, any reward or gratuity, and every surveyor, or other person appointed to measure ships or vessels, who shall wilfully deliver to any collector, or naval officer, a false description of any ship or vessel, to be enrolled or licensed, in pursuance of this act, *shall*, upon conviction of any such neglect or offence, forfeit to the United States five hundred dollars, and *be rendered incapable of serving in any office of trust or profit, under the United States.* And if any person, authorized and required by this act, in respect to his office, to perform any act or thing required by this act, shall wilfully neglect or refuse to do and perform the same, according to the true intent and meaning of this act, such person, on being duly convicted thereof, if not hereby subject to the penalty and disqualifications aforesaid, shall forfeit and pay the sum of five hundred dollars for the first offence, and a like sum for the second offence, and *shall from thenceforward, be rendered incapable of holding any office of trust or profit under the United States.*

6. Act of Feb. 26, 1853, ch. 81, § 5, 10 Stat. 170, 171:

SEC. 5. *And be it further enacted*, That any officer having the custody of any record, document, paper, or proceeding specified in the last preceding section of this act, who shall fraudulently take away, or withdraw, or destroy any such record, document, paper, or proceeding filed in his office or deposited with him, or in his custody, shall be deemed guilty of felony, and on conviction in any court of the United States having jurisdiction thereof, shall pay a fine not exceeding two thousand dollars, or suffer imprisonment in a penitentiary not exceeding three years, or both, as the court in its discretion shall adjudge,

and *shall* forfeit his office and *be forever afterwards disqualified from holding any office under the Government of the United States.*

7. Act of Feb. 26, 1853, ch. 81, § 6, 10 Stat. 170, 171:

SEC. 6. *And be it further enacted,* That if any person or persons shall, directly or indirectly, promise, offer, or give, or cause or procure to be promised, offered, or given, any money, goods, right in action, bribe, present, or reward, or any promise, contract, undertaking, obligation, or security for the payment or delivery of any money, goods, right in action, bribe, present, or reward, or any other valuable thing whatever, to any member of the Senate or House of Representatives of the United States, after his election as such member, and either before or after he shall have qualified and taken his seat, or to any officer of the United States, or person holding any place of trust or profit, or discharging any official function under, or in connection with, any department of the Government of the United States, or under the Senate or House of Representatives of the United States, after the passage of this act, with intent to influence his vote or decision on any question, matter, cause, or proceeding which may then be pending, or may by law, or under the Constitution of the United States, be brought before him in his official capacity, or in his place of trust or profit, and shall be thereof convicted, such person or persons so offering, promising, or giving, or causing or procuring to be promised, offered, or given any such money, goods, right in action, bribe, present, or reward, or any promise, contract, undertaking, obligation, or security for the payment or delivery of any money, goods, right in action, bribe, present, or reward, or other valuable thing whatever, and the member, officer, or person who shall in anywise accept or receive the same, or any part thereof, shall be liable

to indictment as for a high crime and misdemeanor in any court of the United States having jurisdiction for the trial of crimes and misdemeanors; and shall, upon conviction thereof, be fined not exceeding three times the amount so offered, promised, or given, and imprisoned in a penitentiary not exceeding three years; and the person convicted of so accepting or receiving the same, or any part thereof, if an officer or person holding any such place of trust or profit as aforesaid, shall forfeit his office or place; and any person so convicted under this section *shall forever be disqualified to hold any office of honor, trust, or profit, under the United States.*

8. Act of July 2, 1862, ch. 128, 12 Stat. 502:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter *every person elected* or appointed *to any office of honor or profit under the government of the United States,* either in the civil, military or naval departments of the public service, excepting the President of the United States, shall, before entering upon the duties of such office, and before being entitled to any of the salary or other emoluments thereof, *take and subscribe the following oath or affirmation*: "I, A. B., do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor attempted to exercise the functions of any office whatever, under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power or constitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will sup-

port and defend the Constitution of the United States, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God;" which said oath, so taken and signed, shall be preserved among the files of the court, House of Congress, or Department to which the said office may appertain. And *any person who shall falsely take the said oath shall* be guilty of perjury, and on conviction, in addition to the penalties now prescribed for that offense, shall *be deprived of his office and rendered incapable forever after of holding any office or place under the United States.*

9. Act of July 16, 1862, ch. 180, 12 Stat. 577, 578:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any member of Congress or any officer of the government of the United States who shall, directly or indirectly, take, receive, or agree to receive, any money, property, or other valuable consideration whatsoever, from any person or persons for procuring, or aiding to procure, any contract, office, or place, from the government of the United States or any department thereof, or from any officer of the United States, for any person or persons whatsoever, or for giving any such contract, office, or place to any person whomsoever, and the person or persons who shall directly or indirectly offer or agree to give, or give or bestow any money, property, or other valuable consideration whatsoever, for the procuring or aiding to procure any contract, office, or place as aforesaid, and any member of Congress who shall directly or indirectly take, receive, or agree to receive any money, property, or other valuable consideration whatsoever after his election as such member, for his attention to, services, action, vote, or decision on any question, matter, cause or proceeding which may then be pending, or may by law or under the Constitution of the United States be brought before him in his official capacity, or in his place of trust and profit as such member of Congress, shall, for every such offense, be liable to indictment as for a misdemeanor in any court of the United States having jurisdiction thereof, and on conviction thereof shall pay a fine of not exceeding ten thousand dollars, and suffer imprisonment in the penitentiary not exceeding two years, at the discretion of the court trying the same; and any such contract or agreement, as aforesaid, may, at the option of the President of the United States, be absolutely null and void; and *any member of Congress* or officer of the United States convicted, as aforesaid, *shall, moreover, be disqualified from holding any office of honor, profit, or trust under the government of the United States.*

10. Act of July 17, 1862, ch. 195, §§ 1-3, 12 Stat. 589, 590:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every person who shall hereafter commit the crime of treason against the United States, and shall be adjudged guilty thereof, shall suffer death, and all his slaves, if any, shall be declared and made free; or, at the discretion of the court, he shall be imprisoned for not less than five years and fined not less than ten thousand dollars, and all his slaves, if any, shall be declared and made free; said fine shall be levied and collected on any or all of the property, real and personal, excluding slaves, of which the said person so convicted was the owner at the time of committing the said crime, any sale or conveyance to the contrary notwithstanding.

SEC. 2. *And be it further enacted,* That if any person shall hereafter incite, set on foot, assist, or

engage in any rebellion or insurrection against the authority of the United States, or the laws thereof, or shall give aid or comfort thereto, or shall engage in, or give aid and comfort to, any such existing rebellion or insurrection, and be convicted thereof, such person shall be punished by imprisonment for a period not exceeding ten years, or by a fine not exceeding ten thousand dollars, and by the liberation of all his slaves, if any he have; or by both of said punishments, at the discretion of the court.

SEC. 3. *And be it further enacted,* That *every person guilty of either of the offenses described in this act shall be forever incapable and disqualified to hold any office under the United States.*

11. Act of June 11, 1864, ch. 119, 13 Stat. 123:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no *member of the Senate or House of Representatives* shall, after his election and during his continuance in office, nor shall any head of a department, head of a bureau, clerk, or any other officer of the government receive or agree to receive any compensation whatsoever, directly or indirectly, for any services rendered, or to be rendered, after the passage of this act, to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party, or directly or indirectly interested, before any department, court-martial, bureau, officer, or any civil, military, or naval commission whatever. And any person offending against any provision of this act shall, on conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine not exceeding ten thousand dollars, and by imprisonment for a term not exceeding two years, at the discretion of the court trying the same, and *shall be forever thereafter incapable of holding any office of honor,*

trust, or profit under the government of the United States.

12. Act of Feb. 25, 1865, ch. 52, §§ 1, 2, 13 Stat. 437:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall not be lawful for any military or naval officer of the United States, or other person engaged in the civil, military, or naval service of the United States, to order, bring, keep, or have under his authority or control, any troops or armed men at the place where any general or special election is held in any state of the United States of America, unless it shall be necessary to repel the armed enemies of the United States, or to keep the peace at the polls. And that it shall not be lawful for any officer of the army or navy of the United States to prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any state of the United States of America, or in any manner to interfere with the freedom of any election in any state, or with the exercise of the free right of suffrage in any state of the United States. Any officer of the army or navy of the United States, or other person engaged in the civil, military, or naval service of the United States, who violates this section of this act, shall, for every such offence, be liable to indictment as for a misdemeanor, in any court of the United States having jurisdiction to hear, try, and determine cases of misdemeanor, and on conviction thereof shall pay a fine not exceeding five thousand dollars, and suffer imprisonment in the penitentiary not less than three months, nor more than five years, at the discretion of the court trying the same; and any person convicted as aforesaid *shall, moreover, be disqualified from holding any office of honor, profit, or trust, under the government of the United States: Pro-*

vided, That nothing herein contained shall be so construed as to prevent any officers, soldiers, sailors, or marines, from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the state in which he shall offer to vote.

SEC. 2. *And be it further enacted,* That any officer or person in the military or naval service of the United States, who shall order or advise, or who shall directly or indirectly, by force, threat, menace, intimidation, or otherwise, prevent or attempt to prevent any qualified voter of any state of the United States of America from freely exercising the right of suffrage at any general or special election in any state of the United States, or who shall in like manner compel, or attempt to compel, any officer of an election in any such state to receive a vote from a person not legally qualified to vote, or who shall impose or attempt to impose any rules or regulations for conducting such election different from those prescribed by law, or interfere in any manner with any officer of said election in the discharge of his duties, shall for any such offence be liable to indictment as for a misdemeanor, in any court of the United States having jurisdiction to hear, try, and determine cases of misdemeanor, and on conviction thereof shall pay a fine of not exceeding five thousand dollars, and suffer imprisonment in the penitentiary not exceeding five years, at the discretion of the court trying the same, and any person convicted as aforesaid, *shall, moreover, be disqualified from holding any office of honor, profit, or trust, under the government of the United States.*

13. Act of March 3, 1911, ch. 231, § 144, 36 Stat. 1087, 1136:

SEC. 144. Whoever, *being elected or appointed a Senator, Member of, or Delegate to Congress,* or a Resident Commissioner, shall, after his election or

appointment, and either before or after he has qualified, and during his continuance in office, practice in the Court of Claims, shall be fined not more than ten thousand dollars and imprisoned not more than two years; and *shall, moreover, thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States.*

14. Title 18 U.S.C. § 203 (1988 ed.):

Compensation to Members of Congress, officers and others in matters affecting the Government

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly—(1) demands, seeks, receives, accepts, or agrees to receive, or accept, any compensation for any services rendered or to be rendered either personally or by another—

(A) at a time when such person is a Member of Congress, Member of Congress Elect, Delegate, Delegate Elect, Resident Commissioner, or Resident Commissioner Elect; or

(B) at a time when such person is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia.

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission; or

(2) knowingly directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the

person to whom the compensation is given, promised, or offered, is or was such a Member, Delegate, Commissioner, officer, or employee;

Shall be fined under this title or imprisoned for not more than two years, or both; and *shall be incapable of holding any office of honor, trust, or profit under the United States.* . . .

15. Title 18 U.S.C. § 204 (1988 ed.):

Practice in United States Claims Court or the United States Court of Appeals for the Federal Circuit by Members of Congress

Whoever, being a Member of Congress, Member of Congress Elect, Delegate from the District of Columbia, Delegate Elect from the District of Columbia, Resident Commissioner, or Resident Commissioner Elect, practices in the United States Claims Court or the United States Court of Appeals for the Federal Circuit, shall be fined not more than $10,000 or imprisoned for not more than two years, or both, and *shall be incapable of holding any office of honor, trust, or profit under the United States.*

APPENDIX F

OTHER ARKANSAS ELECTION PROVISIONS

Constitution

1. Arkansas Constitution, Art. 3, § 1, provides:

Qualifications of electors—Equal suffrage—Poll tax.

Every citizen of the United States of the age of twenty-one years, who has resided in the State twelve months, in the county six months, and in the precinct, town or ward one month, next preceding any election at which they may propose to vote, except such persons as may for the commission of some felony be deprived of the right to vote by law passed by the General Assembly, and who shall exhibit a poll tax receipt or other evidence that they have paid their poll tax at the time of collecting taxes next preceding such election, shall be allowed to vote at any election in the State of Arkansas; provided, that persons who make satisfactory proof that they have attained the age of twenty-one years since the time of assessing taxes next preceding said election and possess the other necessary qualifications, shall be permitted to vote; and, provided further, and the said tax receipt shall be so marked by dated stamp or written endorsement by the judges of election to whom it may be first presented as to prevent the holder thereof from voting more than one at any election. It is declared to be the purpose of this amendment to deny the right of suffrage to aliens and it is declared to be the purpose of this amendment to confer suffrage equally upon both men and women, without regard to sex. Provided, that women shall not be compelled to serve on juries.

2. Arkansas Constitution, Art. 19, § 3, provides:

No person shall be elected to or appointed to fill a vacancy in any office who does not possess the qualifications of an elector.

3. Arkansas Constitution, Amendment 29, provides:

§ 1 Elective offices—Exceptions.

Vacancies in the office of United States Senator, and in all elective state, district, circuit, county, and township offices except those of Lieutenant Governor, Member of the General Assembly and Representative in the Congress of the United States, shall be filled by appointment by the Governor.

§ 2 Ineligible persons—Nepotism.

The Governor, Lieutenant Governor and Acting Governor shall be ineligible for appointment to fill any vacancies occurring or any office or position created, and resignation shall not remove such ineligibility. Husbands and wives of such officers, and relatives of such officers, or of their husbands and wives within the fourth degree of consanguinity or affinity, shall likewise be ineligible. No person appointed under Section 1 shall be eligible for appointment or election to succeed himself.

* * *

§ 5 Election to fill—Placing names on ballots.

Only the names of candidates for office nominated by an organized political party at a convention of delegates, or by a majority of all the votes cast for candidates for the office in a primary election, or by petition of electors as provided by law, shall be placed on the ballots in any election.

4. Arkansas Constitution, Amendment 51, § 17, provides:

This amendment supersedes and repeals the requirement of Amendment No. 8 [amending Art. 3, § 1] that a poll tax receipt be presented prior to registration or voting, and further supersedes and repeals Act 19 of 1964 and all other laws or parts of laws in conflict herewith.

Statutes

1. Arkansas Code Ann. § 7-3-108 provides:

Communist or subversive parties—New parties—Affidavit required—Penalty.

(a) No political party shall be recognized, qualified to participate, or permitted to have the names of its candidates printed on the ballot in any election in this state:

(1) Which is directly or indirectly affiliated by any means whatsoever with the Communist Party of the United States, the Communist International, or any other foreign agency, political party, organization, or government; or

(2) Which either directly or indirectly advocates, teaches, justifies, aids, or abets the overthrow by force or violence, or by any unlawful means, of the government of the United States or this state; or

(3) Which directly or indirectly carries on, advocates, teaches, justifies, aids, or abets a program of sabotage, force and violence, sedition, or treason against the government of the United States or this state.

(b) No newly organized political party shall be recognized or qualified to participate or permitted to have the names of its candidates printed on the ballot in any election in this state until it has filed an affidavit, by the officers of the party in this state under oath that:

(1) It is not directly or indirectly affiliated by any means whatsoever with the Communist Party of the United States, the Third Communist International, or any other foreign agency, political party, organization, or government; or

(2) It does not either directly or indirectly advocate, teach, justify, aid, or abet the overthrow by

force or violence, or by any unlawful means, of the government of the United States or this state; or

(3) It does not directly or indirectly carry on, advocate, teach, justify, aid, or abet a program of sabotage, force and violence, sedition, or treason against the government of the United States or this state. The affidavit shall be filed with the Secretary of State, and he shall make any investigation as he may deem necessary to determine the character and nature of the political doctrines of the proposed new party. If he finds that the proposed new party advocates doctrines or has affiliations which are in violation of the provisions of this act, he shall not permit the party to participate in the election.

(c) Any person who shall violate any provision of this section shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) and, in addition thereto, may be imprisoned for not more than six (6) months.

2. Arkansas Code Ann. § 7-5-207 provides:

Ballots—Names included.

(a) All election ballots provided by the county board of election commissioners of any county in this state for any election shall contain in the proper place the name of every candidate whose nomination for any office to be filled at that election has been certified to the commissioners and shall not contain the name of any candidate or person who has not been certified. If any candidate shall, prior to the printing of the ballots, notify the secretary of the state committee in the case of a United States, state, or district office, or the secretary of the county committee in the case of a county, city or township office, in writing, signed by the candidate, and acknowledged before an officer authorized to take acknowledgments, of his desire to withdraw as a

candidate for the office or position, the name of the person shall not be printed on the ballot at the general or special election.

(b) No person's name shall be printed upon the ballot as a candidate for any public office in this state at any election unless the person is qualified and eligible at the time of filing as a candidate for the office to hold the public office for which he is a candidate, except if a person is not qualified to hold the office at the time of filing because of age alone, the name of the person shall be printed on the ballot as a candidate for the office if the person will qualify to hold the office at the time prescribed by law for taking office.

3. Arkansas Code Ann. § 7-7-101 provides:

Selection of nominees.

The name of no person shall be printed on the ballot in any general or special election in this state as a candidate for election to any office unless the person shall have been certified as a nominee selected pursuant to this subchapter.

4. Arkansas Code Ann. § 7-7-102 provides:

Party nominees certified at primary election.

(a) Nominees of any political party for United States Senate, United States House of Representatives, state, district, or county office to be voted upon at a general election shall be certified as having received a majority of the votes cast for the office, or as an unopposed candidate, at a primary election held by the political party in the manner provided by law.

(b) Nominees of any political party for township or municipal office shall be declared by certification of a primary election as provided in subsection (a) of this section.

5. Arkansas Code Ann. § 7-7-103 provides:

Filing as an independent—Petitions—Disqualification.

* * *

(b) Any person desiring to have his name placed upon the ballot as an independent candidate without political party affiliation for any state, county, township, or district office in any general election in this state shall file as an independent candidate in the manner provided in this section no later than the date fixed by law as the deadline for filing political practice pledges and party pledges if any are required by the rules of the party to qualify as a candidate of a political party in a primary election or the first day of May, whichever is later.

(c)(1) He shall furnish, at the time he files as an independent candidate, petitions signed by not less than three percent (3%) of the qualified electors in the county, township, or district in which the person is seeking office, but in no event shall more than two thousand (2,000) signatures be required for a district office.

(2) If the person is a candidate for state office or for United States Senator in which a statewide race if required, the person shall file petitions signed by not less than three percent (3) of the qualified electors of the state, or ten thousand (10,000) signatures of qualified electors, whichever is the lesser. Each elector signing the petition shall be a registered voter, and the petition shall be directed to the official with whom the person is required by law to file nomination certificates to qualify as a candidate, requesting that the name of the person be placed on the ballot for election to the office mentioned in the petition.

(3) Petitions shall be circulated not earlier than sixty (60) calendar days prior to the deadline for

filing petitions to qualify as an independent candidate.

* * *

(f) A person who has been defeated in a party primary shall not be permitted to file as an independent candidate in the general election for the office for which he was defeated in the party primary.

6. Arkansas Code Ann. § 7-7-203 provides:

Dates.

(a) The general primary election shall be held on the second Tuesday in June preceding the general election.

(b) The preferential primary election shall be held on the Tuesday two (2) weeks prior to the general primary election.

(c) Party pledges, if any, and political practice pledges for primary elections shall be filed, and ballot fees shall be paid, during regular office hours in the period beginning at 12:00 noon on the third Tuesday in March and ending at 12:00 noon on the fourteenth day thereafter, before the preferential primary election. Party pledges, if any, and political practice pledges shall be filed, and ballot fees for special primary elections shall be paid, on or before the deadline established by proclamation of the Governor. Pledges and ballot fees for a new political party shall be filed and paid as provided in subsection (g) of this section. However, this subsection does not apply to preferential presidential primary candidates.

(d) No later than forty (40) days before the preferential primary election, the chairman and secretary of the state committee of the political party shall certify to the various county committees the

names of all candidates who have qualified with the state committee for election by filing the party pledge and paying the ballot fee within the time required by law.

* * *

(g) Any group of voters desiring to form a new political party may do so by filing a petition with the Secretary of State. The petition shall contain the signatures of qualified electors of this state equal in number to at least three percent (3%) of the total vote cast for the Office of Governor or nominees for presidential electors, whichever is less, at the last preceding election. The petitions shall be filed with the Secretary of State no later than 12:00 noon on the first Tuesday in the fourth calendar month before the preferential primary election. The petitions shall be circulated during the period beginning one hundred twenty (120) calendar days prior to the deadline for filing the petitions with the Secretary of State. However, this subsection does not apply to preferential presidential primary elections.

7. Arkansas Code Ann. § 7-7-301 provides:

Party pledges and ballot fees.

(a) On or before the time in § 7-7-203(c), all candidates at primary elections held by political parties shall file any pledge required by such party and shall pay the ballot fees required by the party, as follows:

(1) Candidates for United States Senator, Representative in Congress, and all state offices shall file the pledge and pay the ballot fees with the secretary of the state committee of the political party or his designated agent; . . .

* * *

(b)(1) Before the name of any person shall appear on the primary ballot of a political party as a

candidate for any local, state, or federal office, the secretary of the county committee or the secretary of the state committee, as the case may be, of the political party must make an affirmative determination that the person complies with the eligibility requirements of the office.

(2) The secretary of the county committee or state committee, as the case may be, shall require an affidavit of eligibility from the candidate, and the secretary may make such independent investigation as he deems necessary to determine the eligibility of the candidate to serve in the office he seeks, including the power to compel the person to answer interrogatories. The affidavit of eligibility shall be filed along with the filing fee and party pledge, and the investigation concerning the eligibility shall be concluded within two (2) weeks after the filing deadline for nomination.

(c) The county clerk shall not accept for filing the political practices pledge of any candidate for nomination by a political party to any county office, nor shall the Secretary of State accept for filing the political practice pledge of any candidate for nomination by a political party to any district office, unless the candidate first furnishes written evidence of payment of all ballot fees required by the political party for candidates for the office of which the person is seeking nomination and written evidence of the filing of all party pledges required by the political party, if any. "Written evidence" shall mean a written statement or receipt signed by the secretary or chairman of the county committee or the state committee, as the case may be, of the political party evidencing payment of the fees and filing of the party pledge, if any, required by the political party.

(d) Any candidate who shall fail to file the party pledge and pay the ballot fee at the time and in the

manner as provided in this section shall not have his name printed on the ballot at any primary election.

* * *

8. Arkansas Code Ann. § 7-8-101 provides:

Primaries—General law governs.

All primaries, preferential and general, for the selection of nominees for federal offices, including those of the United States Senators and Representatives, shall be held on the same date and in the same manner as the preferential and general primaries for state, district, county, and township offices and shall be governed by the same procedure prescribed by this act.

* * *

9. Arkansas Code Ann. § 14-49-202 provides:

(a) No person on the commission shall hold or be a candidate for any office or public trust under any national, state, county, or municipal government, or school district, or be connected in any way in any official capacity with any political party or organization. . . .

10. Arkansas Code Ann. § 14-50-202 provides:

(a) Members of the civil service commission shall be citizens of the State of Arkansas and residents of the city for at least three (3) years immediately preceding their appointment.

(b)(1) No person on the commission shall hold or be a candidate for any political office under any national, state, county, or municipal government, or be connected in any official capacity with any political party or organization. . . .

11. Arkansas Code Ann. § 14-49-306 provides:

(a) No employee in any department affected by this chapter shall engage in the solicitation of any

subscription funds or assessments, or contribute thereto, for any political party or purpose.

(b) An employee shall not be connected with any political campaign or political management, except to cast his vote and to express his personal opinion privately.

12. Arkansas Code Ann. § 14-50-306 provides:

(a) No employee in any department affected by this chapter shall engage in the solicitation of any subscription funds or assessments, or contribute thereto, for any political party or purpose.

(b) An employee shall not be connected with any political campaign or political management except to cast his vote and to express his personal opinion privately.

13. Arkansas Code Ann. § 16-90-112(b) provides:

Every person convicted of bribery or felony shall be excluded from every office of trust or profit and from the right of suffrage in this state.

APPENDIX G

EXAMPLES OF OTHER STATES' ELECTION LAWS

1. Eligibility To Vote

Mississippi Const., Art. 12, § 250, provides:

> All qualified electors and no others shall be eligible to office, except as otherwise provided in this Constitution; provided, however, that as to an office where no other qualification than that of being a qualified elector is provided by this Constitution, the legislature may, by law, fix additional qualifications for such office.

Nevada Const., Art. 15, § 3, provides:

> Eligibility for public office.
>
> No person shall be eligible to any office who is not a qualified elector under this constitution.

[See also requirements of voter eligibility at pages 57a-67a, *infra*.]

2. District Residency

Idaho Code § 34-1904 provides:

> All candidates for election as representatives in Congress shall be residents of the congressional district from which they seek such election.

Nevada Rev. Stat. § 293.1755 provides:

> Residence requirements for candidates: Additional requirement; penalties; exception.
>
> 1. In addition to any other requirement provided by law, no person may be a candidate for any office

> unless, for at least 30 days before the close of filing of declarations of candidacy, acceptances of candidacy or affidavits of candidacy for the office which he seeks, he has been a legal resident of the state, district, county, township, city or other area prescribed by law to which the office pertains and, if elected, over which he will have jurisdiction or which he will represent. . . .

North Carolina Gen. Stat. § 163-106 provides:

> . . . (f) Candidates required to file their notice of candidacy with the State Board of Elections under subsection (c) of this section shall file along with their notice a certificate signed by the chairman of the board of elections or the supervisor of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, ...

3. Durational Residency

Arizona Rev. Stat. Ann. § 16-311 provides:

> A. Any person desiring to become a candidate at a primary election for a political party and to have his name printed on the official ballot shall be a qualified elector of such party.
>
> * * * *
>
> E. The nomination paper of a candidate for the office of United States senator, or representative in Congress or for a state office, including a member of the legislature, or for any other office for which the electors of the entire state or a subdivision of the state greater than a county are entitled to vote, shall be filed with the secretary of state no later than five o'clock p.m. on the last date for filing.
>
> * * * *

Arizona Rev. Stat. Ann. § 16-101 provides:

Qualifications of registrant; definition.

A. Every resident of the state is qualified to register to vote if he:

* * * *

3. Will have been a resident of the state twenty-nine days next preceding the election, except as provided in § 16-126. . . .

Colorado Rev. Stat. § 1-4-802 provides:

Petitions for nominating independent candidates.

(1) Candidates for public offices to be filled at a general or congressional vacancy election who do not wish to affiliate with a political party may be nominated, other than by a primary election or a convention, in the following manner:

* * * *

(g) No person shall be placed in nomination by petition unless the person is an eligible elector of the political subdivision or district in which the officer is to be elected and unless the person was registered as unaffiliated, as shown on the books of the county clerk and recorder, for at least twelve months prior to the date of filing of the petition; . . . .

Idaho Code § 34-604 provides:

. . . (2) No person shall be elected to the office of United States senator unless he has attained the age of thirty (30) years at the time of his election, has been a citizen of the United States at least nine (9) years and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state. Each declaration shall have attached thereto a petition which shall contain the signatures of one thousand (1000) qualified electors. . . .

Idaho Code § 34-605 provides:

. . . (2) No person shall be elected to the house of representatives unless he has attained the age of twenty-five (25) years at the time of his election, has been a citizen of the United States at least seven (7) years and shall have resided within the state for two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state. Each declaration shall have attached thereto a petition which shall contain the signatures of five hundred (500) qualified electors who reside within the congressional district. . . .

4. Disqualifications for Felonies

Alaska Stat. § 15.25.030 provides:

(a) A member of a political party who seeks to become a candidate of the party in the primary election shall execute and file a declaration of candidacy. The declaration shall be executed under oath before an officer authorized to take acknowledgements and shall state in substance:

* * *

(10) that the candidate is a qualified voter as required by law;

Alaska Const., Art. V, § 2 provides:

No person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored. No person may vote who has been judicially determined to be of unsound mind unless the disability has been removed.

Arizona Rev. Stat. Ann. § 13-904 provides:

A. A conviction for a felony suspends the following civil rights of the person sentenced:

* * *

2. The right to hold public office of trust or profit.

Connecticut Gen. Stat. § 9-46 provides:

Forfeiture of electoral rights

(a) A person shall forfeit his right to become an elector and his privileges as an elector upon conviction of a felony, except that a person convicted of the crime of nonsupport shall not forfeit such right or privileges.

(b) No person who has forfeited and not regained his privileges as an elector, as provided in section 9-46a, may be a candidate for or hold public office.

Hawaii Rev. Stat. § 38-831-2 provides:

Rights lost.

(a) A person sentenced for a felony, from the time of the person's sentence until the person's final discharge, may not:

* * *

(2) Become a candidate for or hold public office. . . .

Missouri Rev. Stat. § 115.349 provides:

. . . 3. Each declaration of candidacy for nomination in a primary election shall . . . be in substantially the following form:

I,————————, a resident and registered voter of the —— precinct of the township of ————————. . . .

Missouri Rev. Stat. § 115.133 provides:

. . . 2. No person who is adjudged incapacitated shall be entitled to register or vote. No person shall be entitled to vote:

(1) While confined under a sentence of imprisonment;

(2) While on probation or parole after conviction of a felony, until finally discharged from such probation or parole; or

(3) After conviction of a felony or misdemeanor connected with the right of suffrage.

New Hampshire Rev. Stat. Ann. § 607-A:2 provides:

Rights Lost.

I. A person sentenced for a felony, from the time of his sentence until his final discharge, may not:

* * * *

(b) Become a candidate for or hold public office. . . .

New Jersey Stat. Ann. § 19:13-8 provides:

Acceptance of nomination; annexation of oath of allegiance.

A candidate nominated for an office in a petition shall manifest his acceptance of such nomination by a written acceptance thereof. . . . Such acceptance shall certify that the candidate is a resident of and a legal voter in the jurisdiction of the office for which the nomination is made. . . .

New Jersey Stat. Ann. § 19:4-1 provides:

No person shall have the right of suffrage—

* * * *

(6) Who has been convicted of a violation of any of the provisions of this Title, for which criminal penalties were imposed, if such person was deprived of such right as part of the punishment therefor according to law unless pardoned or restored by law to the right of suffrage; or

(7) Who shall be convicted of the violation of any of the provisions of this Title, for which criminal penalties are imposed, if such person shall be deprived of such right as part of the punishment therefor according to law, unless pardoned or restored by law to the right of suffrage; or

(8) Who is serving a sentence or is on parole or probation as the result of a conviction of any indicable offense under the laws of this or another state or of the United States.

North Carolina Gen. Stat. § 163-106 provides:

(a) Notice and Pledge.—No one shall be voted for in a primary election unless he shall have filed a notice of candidacy . . . in the following form:

. . . I affiliate with the ———— party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the ———— party.)

I pledge that if I am defeated in the primary, I will not run for any office as a write-in candidate in the next general election. . . .

North Carolina Gen. Stat. § 163-55 provides:

The following classes of persons shall not be allowed to register or vote in this State:

* * * *

(2) Any person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

Ohio Rev. Code Ann. § 2961.01 provides:

A person convicted of a felony under the laws of this or any other state or the United States, unless his conviction is reversed or annulled, is incompetent to be an elector or juror, or to hold an office of honor, trust, or profit. . . .

West Virginia Code § 3-5-7 provides:

Any person who is eligible to hold and seek to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this chapter shall file a certificate of announcement declaring as a candidate for the nomination or election to such office.

* * *

(b) The certificate of announcement shall be in a form . . . on which the candidate shall make a sworn statement . . . containing the following information:

* * *

(4) The county of residence and a statement that the candidate is a legally qualified voter of that county; . . . .

West Virginia Code § 3-1-3 provides:

. . . But no person who has not been registered as a voter as required by law, or who is a minor, or of unsound mind, or who is under conviction of treason, felony or bribery in an election, or who is not a bona fide resident of the state, county or municipality in which he offers to vote, shall be permitted to vote at such election while such disability continues.

5. Disqualifications for Particular Offenses

Alabama Code § 17-16-12 provides:

The name of no candidate shall be printed upon any official ballot used at any primary election unless

such person is legally qualified to hold the office for which he is a candidate and unless he is eligible to vote in the primary election in which he seeks to be a candidate. . . .

Alabama Const., Art. VIII, § 182, provides:

The following persons shall be disqualified both from registering, and from voting, namely:

All idiots and insane persons; those who shall by reason of conviction of crime be disqualified from voting at the time of the ratification of this Constitution; those who shall be convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, crime against nature, or any crime punishable by imprisonment in the penitentiary, or of any infamous crime or crime involving moral turpitude; also, any person who shall be convicted as a vagrant or tramp, or of selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote another, or of making or offering to make a false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or register to secure the registration of any person as an elector.

Kentucky Rev. Stat. Ann. § 121A.990(1)(a) provides:

Any slate of candidates, authorized treasurer, or any other individual who knowingly violates the expenditure limitations imposed by KRS 121A.030 or the contribution limitations imposed by KRS 121A.050, knowing misuses any transfers from the fund in violation of KRS 121A.110, or knowingly falsifies any record required to be submitted or retained by the slate under this chapter shall be guilty of a Class D felony, and shall be disqualified from being appointed to or becoming a candidate for public office, or holding public office, for a period of five (5) years from the date of final judicial determination of guilt.

Michigan Comp. Laws § 168.91 provides:

United States senator; eligibility

A person shall not be a United States senator unless the person has attained the age of 30 years and has been a citizen of the United States for 9 years, and is, when elected, an inhabitant of that state for which he or she shall be chosen as provided in section 3 of article 1 of the United States constitution. A person who has been convicted of a violation of section 12a(1) of Act No. 370 of the Public Acts of 1941, being section 38.412a of the Michigan Compiled Laws, shall not be eligible to the office of United States senator for a period of 20 years after conviction.

Michigan Comp. Laws § 168.131 provides:

Representative in Congress; eligibility

A person shall not be a representative unless the person has attained the age of 25 years and been a citizen of the United States for 7 years, and is, when elected, an inhabitant of that state in which he or she shall be chosen, as provided in section 2 of article 1 of the United States Constitution. A person who has been convicted of a violation of section 12a(1) of Act No. 370 of the Public Acts of 1941, being section 38.412a of the Michigan Compiled Laws, shall not be eligible to the office of representative in congress for a period of 20 years after conviction.

Michigan Comp. Laws § 38.412a provides:

> (1) A member or employee of a county civil service commission or an officer or employee of a county which has adopted this act, being Act. No. 370 of the Public Acts of 1941, shall not provide a copy of the examination given to applicants for appointments to the classified service pursuant to section 12 or a copy of the answers to the examination to an applicant or other person who is not a member or employee of the county civil service commission before the examination is held. . . .
>
> (2) An applicant for appointment to the classified service shall not possess a copy of the examination given to applicants for appointment to the classified service pursuant to section 12 or the answers to the examination, prior to the time the examination is given. A person who violates this subsection if guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $1,000.00, or both. . . .

Mississippi Const., Art. 12, § 250, provides:

> All qualified electors and no others shall be eligible to office, except as otherwise provided in this Constitution; provided, however, that as to an office where no other qualification than that of being a qualified elector is provided by this Constitution, the legislature may, by law, fix additional qualifications for such office.

Mississippi Code Ann. § 23-15-19 provides:

> Any person who has been convicted of any crime listed in Section 241, Mississippi Constitution of 1890, shall not be registered, or if registered the name of such person shall be erased from the registration book on which it may be found by the registrar or by the election commissioners.

Rhode Island Gen. Laws § 17-23-4 provides:

> Fraudulent or repeat voting.
>
> Every person who in any election shall fraudulently vote or attempt to vote, not being qualified notwithstanding that person's name may be on the voting list at the polling place where the person shall vote or attempt to vote; . . . or who shall aid, counsel, or procure any other person to so vote or attempt to vote, shall be guilty of a felony, and no person after conviction of such an offense shall be permitted to vote in any election or upon any proposition pending before the people, or to hold any public office. . . .

Rhode Island Gen. Laws § 17-23-5 provides:

> Bribery or intimidation of voters—Immunity of witnesses in bribery trials.
>
> Every person who shall directly or indirectly give, or offer to agree to give, to any elector or to any person for the benefit of any elector, any sum of money or other valuable consideration for the purpose of inducing the elector to give in or withhold that elector's vote at any election in this state, or by way of reward for having voted or withheld that elector's vote, or who shall use any threat or employ any means of intimidation for the purpose of influencing the elector to vote or withhold that elector's vote for or against any candidate or candidates or proposition pending at an election, shall be guilty of a felony, and no person after conviction of such an offense shall be permitted to vote in any election or upon any proposition pending before the people, or to hold any public office; . . . .

6. Disqualifications for Mental Incompetency

Arizona Rev. Stat. Ann. § 16-311 provides:

> A. Any person desiring to become a candidate at a primary election for a political party and to have

his name printed on the official ballot shall be a qualified elector of such party. . . . A candidate for public office shall be a qualified elector at the time of filing and shall reside in the county, district or precinct which he proposes to represent. . . .

* * * *

C. The nomination paper of a candidate for the office of presidential elector, United States senator, representative in Congress or for a state office, including a member of the legislature, or for any other office for which the electors of the entire state or a subdivision of the state greater than a county are entitled to vote, shall be filed with the secretary of state no later than five o'clock p.m. on the last date for filing. . . .

Arizona Rev. Stat. Ann. § 16-101 provides:

Qualifications of registrant; definition.

A. Every resident of the state is qualified to register to vote if he:

* * * *

6. Has not been adjudicated an incapacitated person as defined in § 14-5101. . . .

New Jersey Stat. Ann. § 19:13-8 provides:

A candidate nominated for an office in a petition shall manifest his acceptance of such nomination by a written acceptance thereof, signed by his hand, upon or annexed to such petition, to which shall be annexed the oath of allegiance prescribed in section 41:1-1 of the Revised Statutes. . . . Such acceptance shall certify that the candidate is a resident of and a legal voter in the jurisdiction of the office for which the nomination is made. . . .

New Jersey Stat. Ann. § 19:4-1 provides:

No person shall have the right of suffrage—

(1) Who is an idiot or is insane; . . . .

North Dakota Cent. Code § 44-01-01 provides:

Eligibility to office.

Every elector is eligible to the office for which he is an elector, except when otherwise specially provided. No person is eligible who is not such an elector.

North Dakota Const., Art. 2, § 2, provides:

No person who has been declared mentally incompetent by order of a court or other authority having jurisdiction, which order has not been rescinded, shall be qualified to vote. No person convicted of a felony shall be qualified to vote until his or her civil rights are restored.

7. Prohibitions of Dual Candidacy

Alaska Stat. § 15.25.030(a) provides:

A member of a political party who seeks to become a candidate of the party in the primary election shall execute and file a declaration of candidacy. The declaration shall be executed under oath before an officer authorized to take acknowledgments and shall state in substance:

* * *

(14) that the person is not a candidate for any other office to be voted on at the primary or general election and that the person is not a candidate for this office under any other declaration of candidacy or nominating petition; . . . .

California Elec. Code § 6402 provides:

* * *

(b) No person may file nomination papers for a party nomination and an independent nomination for the same office, or for more than one office at the same election.

Georgia Code Ann. § 21-2-136 provides:

No person shall be nominated, nor shall any person be a candidate in a primary or election, for more than one of the following public offices to be filled at any one election: Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, Commissioner of Labor, United States senator or representative in Congress, Public Service Commissioner, Justice of the Supreme Court, Judge of the Court of Appeals, judge of the probate court, clerk of the superior court, tax commissioner, tax collector, sheriff, judge of the superior court, county treasurer, county school superintendent, tax receiver, and members of the Senate and House of Representatives of the General Assembly.

Maine Rev. Stat. Ann., tit. 21-A, § 331(3), provides:

The following limitations apply to all candidates for nominations.

A. A person may not file, whether by primary election or nomination petition, as a candidate for more than one federal, state or county office at any election, except for a candidate for membership in a county charter commission under section 351, subsection 3. . . .

Oklahoma Stat. § 26-5-106 provides:

Candidates may file for no more than one office at any election.

South Dakota Cod. Laws § 12-6-3 provides:

No person shall be a candidate for nomination to more than one public office. . . .

West Virginia Code § 3-5-7(e) provides:

No person shall be a candidate for more than one office or office division at any election. . . .

8. Disqualifications of State Officials and Employees

Alabama Code § 36-26-38 provides:

. . . No employee in the classified service shall be a member of any national, state or local committee of a political party or an officer of a paritsan political club or a candidate for nomination or election to any public office or shall take any part in the management or affairs of any political party or in any political campaign, except on his personal time and to exercise his right as a citizen privately to express his opinion and to cast his vote; . . . .

Alaska Stat. § 39.25.160 provides:

. . . (e) An employee in the classified or partially exempt service who seeks nomination or becomes a candidate for state or national elective political office shall immediately resign any position held in the state service. The employee's position becomes vacant on the date the employee files a declaration of candidacy for state or national elective office. . . .

Arizona Const., Art. XXII, § 18, provides:

Except during the final year of the term being served, no incumbent of a salaried elective office, whether holding by election or appointment, may offer himself for nomination or election to any salaried local, State or federal office.

Arizona Rev. Stat. Ann. § 41-772 provides:

> . . . B. An employee or member of the personnel board shall not be a member of any national, state or local committee of a political party, an officer or chairman of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, shall not hold any paid, elective public office . . . .

Idaho Code § 67-5311 provides:

> (1) No classified employee of a state department covered by this act shall:
>
> * * * *
>
> (c) Be a candidate and hold elective office in any partisan election. . . .

Indiana Code § 4-15-2-40 provides:

> . . . [A]ny employee in the classified service who is elected to a state or federal public office shall be considered to have resigned from the service.

Kansas Stat. Ann. § 19-4330 provides:

> (a) No officer, agent, clerk or employee of this state shall directly or indirectly use his authority or official influence to compel any officer or employee covered by the provisions of this act to apply for membership in or become a member of any organization, or to pay or promise to pay any assessment, subscription or contribution, or to take part in any political activity. . . .
>
> (b) Any officer or employee covered by the provisions of this act shall resign from the service upon filing as a candidate for public office.

Kansas Stat. Ann. § 75-2953 provides:

> . . . . (b) Any officer or employee in the state classified service shall resign from the service upon filing as a candidate for an elective office, unless the elective office filed for is a township elective office, a county elective office, an elective office in the judicial branch of government or is elected on a nonpartisan basis. . . .

Kentucky Rev. Stat. Ann. § 18A.140 provides:

> . . . (4) No employee in the classified service or member of the board or its executive director shall be a member of any national, state, or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any paid public office. . . .

Louisiana Const., Art. X, § 9, provides:

> . . . No member of a civil service commission and no officer or employee in the classified service shall participate or engage in political activity; be a candidate for nomination or election to public office except to seek election as the classified state employee serving on the State Civil Service Commission; . . .

Louisiana Rev. Stat. Ann. § 42:39 provides:

> A. After July 31, 1968, no person serving in or elected or appointed to the office of judge of any court, justices of the peace excepted, shall be eligible to hold or become a candidate for any national, state or local elective office of any kind whatsoever, including any national, state or local office in any political party organization, other than a candidate for the office of judge for the same or any other court.

B. The provisions of Subsection (A) of this section shall not be construed as prohibiting any person from resigning from his office as judge of any court for the purpose of becoming a candidate for nomination or election to any national, state or local elective office for which he is qualified and eligible; provided, however, that the resignation of any such person shall be and is made not less than twenty-four hours prior to the date on which he qualifies as a candidate for nomination or election to the office to which he seeks nomination or election.

C. If any judge elected or appointed, justice of the peace excepted, qualifies for any other elective position, other than those allowed by the provisions of this section, without complying with the provisions of Subsection (B) set forth above, his qualification as a candidate for the other office shall ipso facto be null and void.

North Carolina Gen. Stat. § 163-125 provides:

(a) No individual may qualify as a candidate for elective public office who holds another elective office, whether State, district, county or municipal, more than 40 days of the term of which runs concurrently with the term of office for which he seeks to qualify without resigning from such office prior to the last day of qualifying for the office he intends to seek. Said resignation shall be effective on or before the last day of qualifying. . . .

(e) This section does not apply to persons holding any elective federal office, nor does it apply to persons holding the office of judge or justice in the General Court of Justice who seek another office as a judge or justice in the General Court of Justice. . . .

Ohio Rev. Code Ann. § 124.57 provides:

. . . [N]or shall any officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships, be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions.

Oklahoma Stat., tit. 19, § 215.8, provides:

The district attorney shall be ineligible to be a candidate for any office which has a term any portion of which is the same as the term for which he was elected.

Texas Const. Art. XVI, § 65, provides:

The following officers elected at the General Election in November, 1954, and thereafter, shall serve for the full terms provided in this Constitution:

(a) District Clerks; (b) County Clerks; (c) County Judges; (d) Judges of the County Courts at Law, County Criminal Courts, County Probate Courts and County Domestic Relations Courts; (e) County Treasurers; (f) Criminal District Attorneys; (g) County Surveyors; (h) Inspectors of Hides and Animals; (i) County Commissioners for Precincts Two and Four; (j) Justices of the Peace. . . .

Provided, however, if any of the officers named herein shall announce their candidacy, or shall in fact become a candidate, in any General, Special or Primary Election, for any office or profit or trust under the laws of this State or the United States other than the office then held, at any time when the unexpired term of the office then held shall ex-

ceed one (1) year, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled.

West Virginia Code § 29-6-20 provides:

(e) Notwithstanding any other provision of this code, no employee in the classified service shall:

* * *

(3) Be a candidate for any national or state paid public office or court of record; or hold any paid public office; . . .

9. Typical Primary Laws

Connecticut Gen. Stat. § 9-379 provides:

Eligibility for placing on ballot.

No name of any candidate shall be printed on any official ballot at any election except the name of a candidate nominated by a major or minor party unless a nominating petition for such candidate is approved by the secretary of the state as provided in sections 9-453a to 9-453p, inclusive.

Indiana Code § 3-8-7-25 provides:

Nominees entitled to have names on ballot.

The state election board and each county election board shall have printed on the respective general or municipal election ballots the names of the following candidates:

(1) Nominees chosen at a primary election under IC 3-10 and certified as required by this chapter.

(2) Nominees chosen by a convention of a political party in the state whose candidate received at least two percent (2%) of the total vote cast for secretary of state at the last election and certified under section 8 of this chapter.

(3) Nominees nominated by petition under IC 3-8-6.

Indiana Code § 3-8-2-8 provides:

(a) A declaration of candidacy for the office of United States Senator or for the office of governor must be accompanied by a petition signed by at least five thousaind (5,000) voters of the state, including at least five hundred (500) voters from each congressional district. . . .

Kansas Stat. Ann. § 25-202(a) provides:

Except as otherwise provided in subsection (b) all candidates for national, state, county and township offices shall be nominated by: (1) a primary election held in accordance with article 2 of chapter 25 of the Kansas Statutes Annotated and amendments thereto; or (2) independent nomination petitions signed and filed as provided by existing statutes. . . .

Wyoming Stat. § 22-5-101 provides:

Nominations of candidates for all offices filled at a general election, except school and community college district offices and special district offices, may be made by primary election, by petition for nomination as an independent candidate as provided in W.S. 22-5-301 through 22-5-308 or by convention as provided in W.S. 22-4-303 and 22-4-406.

10. Non-Affiliation Requirements

California Election Code § 6401 provides:

(a) No declaration of candidacy for a partisan office or for membership on a county central com-

mittee shall be filed, by a candidate unless (1) at the time of presentation of the declaration and continuously for not less than three months immediately prior to that time, or for as long as he has been eligible to register to vote in the state, the candidate is shown by his affidavit of registration to be affiliated with the political party the nomination of which he seeks, and (2) the candidate has not been registered as affiliated with a qualified political party other than that political party the nomination of which he seeks within 12 months, or, in the case of an election governed by Chapter 7 (commencing with Section 7200), within three months immediately prior to the filing of the declaration.

(b) The county clerk shall attach a certificate to the declaration of candidacy showing the date on which the candidate registered as intending to affiliate with the political party the nomination of which he seeks, and indicating that the candidate has not been affiliated with any other qualified political party for the period specified in subdivision (a). . . .

Kentucky Rev. Stat. Ann. § 118.315 provides:

> (1) A candidate for any office to be voted for at any regular election may be nominated by a petition of electors qualified to vote for him, complying with the provisions of subsection (2) of this section. No person who is a registered member of a political party shall be eligible to election as an independent candidate, nor shall any person be eligible to election as an independent candidate who was a registered member of a political party at the time of the last preceding regular election.

Kansas Stat. Ann. § 25-303 provides:

> (b) All nominations other than party nominations shall be independent nominations. No person who has declared and retains a party affiliation in accordance with K.S.A. 25-3301 and amendments thereto

> shall be eligible to accept an independent nomination for any office. . . .

North Carolina Stat. § 163-106 provides:

> . . . (b) . . . No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. . . .

Ohio Rev. Code§ 3513.191 provides:

> Qualification.
>
> No person shall be a candidate for nomination or election at a party primary if he voted as a member of a different political party at any primary election within the current year and the next preceding two calendar years.

11. Affiliation Requirements

Alabama Code § 17-16-12 provides:

> The name of no candidate shall be printed upon any official ballot used at any primary election unless such person is legally qualified to hold the office for which he is a candidate and unless he is eligible to vote in the primary election in which he seeks to be a candidate and possesses the political qualifications prescribed by the governing body of his political party.

Alaska Stat. § 15.25.030(a) provides:

> A member of a political party who seeks to become a candidate of the party in the primary election shall execute and file a declaration of candidacy. The declaration shall be executed under oath before an officer authorized to take acknowledgments and shall state in substance:
>
> * * * *

(16) that the candidate is registered to vote as a member of the political party whose nomination is being sought. . . .

Colorado Rev. Stat. § 1-4-101 provides:

. . . (3) All nominations by political parties for candidates for United States senator, representative in congress, all elective state, district, and county officers, and members of the general assembly shall be made by primary elections. Neither the secretary of state nor any county clerk and recorder shall place on the official general election ballot the name of any person as a candidate of any political party who has not been nominated in accordance with the provisions of this article, or who has not been affiliated with the political party for at least twelve months unless otherwise provided by law, or who does not meet residency requirements for the office, if any. . . .

Florida Stat. ch. 99.021(b) provides:

(b) In addition, any person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:

1. The party of which he is a member.

2. That he is not a registered member of any other political party and has not been a candidate for nomination for any other political party for a period of 6 months preceding the general election for which he seeks to qualify. . . .

Maryland Code Ann., Art. 33, § 4A-1(a), provides:

Each person seeking nomination to any public or party office at a primary election shall file a certificate of candidacy for nomination in the manner and at the time provided in this subtitle. . . . A candidate for any federal, State, local or party office shall be

affiliated with the party whose nomination or office he seeks. . . .

12. Filing Fees

Alaska Stat. § 15.25.050(a) provides:

At the time the declaration is filed, each candidate shall pay a nonrefundable filing fee to the director. The filing fee for candidates for office of governor, lieutenant governor, United States senator, and United States representative is $100. The filing fee for candidates for office of state senator and state representative is $30. . . .

California Election Code § 6552 provides:

Filing fees; salary

(a) The following fees for filing declarations of candidacy shall be paid to the Secretary of State by each candidate:

(1) Two percent of the first-year salary for the office of United States Senator or for any state office. The fee prescribed in this subdivision does not apply to the office of State Senator, Assemblyman, member of the Board of Equalization, or justice of the court of appeal.

(2) One percent of the first-year salary for the office of Representative in Congress, member of the Board of Equalization, or justice of the court of appeal. . . .

Minnesota Stat. § 204B.11 provides:

. . . [A] filing fee shall be paid by each candidate who files an affidavit of candidacy. The fee shall be paid at the time the affidavit is filed. The amount of the filing fee shall vary with the office sought as follows:

(a) for the office of governor, lieutenant governor, attorney general, state auditor, state treasurer,

secretary of state, representative in congress, judge of the supreme court, judge of the court of appeals, judge of the district court, or judge of the county municipal court of Hennepin county, $300;

(b) for the office of senator in congress, $400;

(c) for office of senator or representative in the legislature, $100; . . .

Nevada Rev. Stat. § 293.193 provides:

1. Fees as listed in this section for filing declarations of candidacy or acceptances of candidacy must be paid to the filing officer by cash, cashier's check or certified check.

United States Senator	$500
Representative in Congress	300
Governor	300
Justice of the supreme court	300
Any state office, other than governor or justice of the supreme court	200

Oregon Rev. Stat., tit. 23, § 249.056 provides:

Filing fees.

(1) At the time of filing a declaration of candidacy a candidate for the following offices shall pay to the officer with whom the declaration is filed the following fee:

(a) United States Senator, $150.

(b) Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public Instruction, Representative in Congress, judge of the Supreme Court, Court of Appeals or Oregon Tax Court, or executive officer or auditor of a metropolitan service district, $100. . . .

13. "Spoiler" Laws.

Colorado Rev. Stat. § 1-4-105 provides:

Defeated candidate ineligible

No person who has been defeated as a candidate in a primary election shall be eligible for election to the same office by ballot or as a write-in candidate in the next general election unless the party vacancy committee nominates that person.

Georgia Code Ann. § 21-2-133(d) provides:

No person shall be eligible as a write-in candidate in a general or special election if such person was a candidate for nomination or election to the same office in the immediately preceding primary. . . .

Idaho Code § 34-704 provides:

. . . Candidates who file a declaration of candidacy under a party name and are not nominated at the primary election shall not be allowed to appear on the general election ballot under any other political party name, nor as an independent candidate.

Illinois Ann. Stat., ch. 10, § 5/10-2, provides:

. . . A candidate for whom a nomination paper has been filed as a partisan candidate at a primary election, and who is defeated for his or her nomination at the primary election, is ineligible for nomination as a candidate of a new political party for election in that general election.

Illinois Ann. Stat., ch. 10, § 5/10-3(4), provides:

. . . A candidate for whom a nomination paper has been filed as a partisan candidate at a primary election, and who is defeated for his or her nomination at the primary election, is ineligible to be placed on the ballot as an independent candidate for election in that general or consolidated election.

A candidate seeking election to an office for which candidates of political parties are nominated by caucus who is defeated for his or her nomination at such caucus, is ineligible to be listed on the ballot at that general or consolidated election as an independent candidate.

Illinois Ann. Stat., ch. 10, § 5/17-16.1 provides:

. . . A candidate for whom a nomination paper has been filed as a partisan candidate at a primary election, and who is defeated for his or her nomination at the primary election is ineligible to file a declaration of intent to be a write-in candidate for election in that general or consolidated election.

A candidate seeking election to an office for which candidates of political parties are nominated by caucus who is a participant in the caucus and who is defeated for his or her nomination at such caucus is ineligible to file a declaration of intent to be a write-in candidate for election in that general or consolidated election.

A candidate seeking election to an office for which candidates are nominated at a primary election on a nonpartisan basis and who is defeated for his or her nomination at the primary election is ineligible to file a declaration of intent to be a write-in candidate for election in that general or consolidated election. . . .

Indiana Code § 3-8-1-5.5(a) provides:

Except as provided in IC 3-13-1-19 and IC 3-13-2-10 for filling a vacancy on a ticket, a person who:

(1) is defeated in a primary election; or

(2) appears as a candidate for nomination at a state convention or files a declaration of candidacy for nomination by a town convention and is defeated;

is not eligible to become a candidate for the same office in the next general or municipal election.

Kansas Stat. Ann. § 25-202(c) provides:

No candidate for any national, state, county or township office shall file for office as a partisan candidate in a primary election and also file for office as an independent candidate for any national, state, county or township office in the general election immediately following.

Kentucky Rev. Stat. Ann. § 118.345(1) provides:

(1) No candidate who has been defeated for the nomination for any office in a primary election shall have his name placed on voting machines in the succeeding regular election as a candidate for the same office for the nomination to which he was a candidate in the primary election. . . .

Maryland Code Ann., Art. 33, § 8-2, provides:

Name of defeated primary candidate not to be printed on general ballot.

(a) No person who has been defeated for the nomination for any office in a primary election . . . shall have his name printed on the ballot at the succeeding general election as a candidate for any office. Nothing in this subsection shall be interpreted as being applicable to candidates for nomination of their party for President of the United States who have been defeated in a Presidential preference primary election. . . .

Nebraska Rev. Stat. § 32-516 provides:

. . . No candidate defeated at the primary elections shall be permitted to file by petition in the general

election next following and this provision shall include candidates in counties and cities as well as candidates for nonpolitical offices.

New Hampshire Rev. Stat. Ann. § 659:91-a provides:

> Candidate of One Party
>
> I. Any person who is a candidate on any party's state primary election ballot shall not run as the nominee of a different party in the state general election unless he is successful in securing the nomination of his own party in the primary. Any person who runs as a candidate on any party's state primary election ballot and who is not chosen as the candidate for that party for the elective office for which he was a candidate shall not under any circumstances run as the nominee of a different party in the state general election. . . .

New Mexico Stat. Ann. § 8-1-8-19 provides:

> If a person has been a candidate for the nomination of a major political party in the primary election, he shall not have his name printed on the ballot at the next succeeding general election except under the party name of the party designated on his declaration of candidacy filed for such primary election.

North Carolina Gen. Stat. § 163-123(e) provides:

> (e) Defeated Primary Candidate.—No person whose name appeared on the ballot in a primary election preliminary to the general election shall be eligible to have votes counted for him as a write-in candidate for the same office in that year.

Ohio Rev. Code Ann. § 3513.04 provides:

> No person who seeks party nomination for an office or position at a primary election by declaration of candidacy shall be permitted to become a

> candidate at the following general election for any office by nominating petition or by write-in.

Oregon Rev. Stat., tit. 23, § 249.048 provides:

> No candidate for nomination of a major political party to a public office who fails to receive the nomination shall be entitled to be the candidate of any other political party or to become an independent candidate for the same office at the succeeding general election. The filing office shall not certify the name of such a candidate.

South Carolina Code Ann. § 7-11-10 provides:

> Nominations for candidates for the offices to be voted on in a general or special election may be by political party primary, by political party convention or by petition; provided, no person who was defeated as a candidate for nomination to an office in a party primary or party convention shall have his name placed on the ballot for the ensuing general or special election. . . .

South Dakota Cod. Laws § 12-7-5 provides:

> No person shall file a certificate of nomination pursuant to § 12-7-1 for an office for which he has been a candidate in the primary election of the same year.

Tennessee Code Ann. § 2-5-101(f) provides:

> . . . (3) No person defeated in a primary election shall qualify as an independent for the general election.
>
> (4) No candidate in a party primary election may appear on the ballot in a general election as the nominee of a different political party, or as an independent. . . .

14. Loyalty and State Oaths

Hawaii Rev. Stat. § 2-12-7, provides:

> The name of no candidate for any office shall be printed upon any official ballot, in any election, unless the candidate shall have taken and subscribed to the following written oath or affirmation, and filed the oath with the candidate's nomination papers.
>
> The written oath or affirmation shall be in the following form:
>
> > "I, ————, do solemnly swear and declare, on oath that if elected to office I will support and defend the Constitution and laws of the United States of America, and the Constitution and laws of the State of Hawaii. . . .

Illinois Ann. Stat., ch. 10, § 5/7-10.1 provides:

> Each petition or certificate of nomination shall include as part thereof, a statement for each of the candidates filing, or in whose behalf the petition or certificate of nomination is filed, said statement shall be subscribed and sworn to by such candidate or nominee before some officer authorized to take acknowledgment of deeds in this State and shall be in substantially the following form: . . .
>
> I, ———— do swear that I am citizen of the United States and the State of Illinois, that I am not affiliated directly or indirectly with any communist organization or any communist front organization, or any foreign political agency, party, organization or government which advocates the overthrow of constitutional government by force or other means not permitted under the Constitution of the United States or the Constitution of this State; that I do not directly or indirectly teach or advocate the overthrow of the government of the United States or of this State or any unlawful change in the form of the

> governments thereof by force or any unlawful means. . . .

Pennsylvania Stat. Ann., tit. 25, § 2938.1 provides:

> Every person nominated at any primary election as the candidate of any political party for any office, . . . who has not filed the loyalty oath required by section 14, act of December 22, 1951 (P.L. 1726), known as the "Pennsylvania Loyalty Act", . . . shall . . . file such oath . . . at least eighty-five (85) days previous to the day of the general or municipal election at which such candidate's name would appear on the ballot. Failure to pay such fee or file such oath within the time herein prescribed shall result in a vacancy in such party nomination. . . .